Central Law Journal.

ST. LOUIS, MO., MARCH 9, 1900.

It seems that the constitutionality of National Bankruptcy Law is to be tested in the federal courts. A suit has been begun in the United States Court at Chattanooga, in which it is set up by the complainant, a New York bank, that the act violates the federal constitution in that it is not uniform and equally applicable to all citizens. In support of this contention it is alleged that the act denies voluntary bankruptcy to corporations that are citizens of their respective States as much as ordinary citizens, while permitting all other citizens to go into voluntary bankruptcy, and also denies the right to proceed in involuntary bankruptcy against wage earners or persons engaged chiefly in farming or the tillage of the soil while allowing involuntary proceedings against all other citizens whether persons or corporations. Another ground of objection to the law is, that it is not uniform as guaranteed by the constitution, because it allows exemptions to debtors in varying amounts according to the law of the State of the domicile of such debtor. The result of the case will be watched with interest.

The recent decision of Dickerman v. Northern Trust Co., by the Supreme Court of the United States, regarding the right of a trust combination to make a mortgage, and of the trustee to have it foreclosed, notwithstanding the fact that the trust existed in violation of National and State legislation, will tend, in a large measure, to allay the fear heretofore felt by the holders of securities and mortgages on trust properties, growing out of the illegal character of such combinations, and is an assurance that such securities are free from attack in the direction indicated. The case before the court was a foreclosure of a trust deed, covering thirty-nine paper mill properties, belonging to the Columbia Straw Paper Company, a New Jersey corporation. One of the defenses pleaded by intervening stockholders, was, to the effect that the corporation was a trust, forbidden by the Sherman Act of 1890, and the Illinois Anti-Trust Act of 1891. The supreme court affirming the lower courts, rejected the defense, stating that the fact could not materially affect the foreclosure, that it was difficult to see how the purpose for which the corporation was organized could become a material inquiry. As long as the corporation existed, it had the power to make a mortgage, which in a proper case, could be foreclosed. The trustee in the trust deed was no party to the alleged combination, and the fraud, if any existed, was wholly extrinsic to the mortgage. "It would seem a curious defense if a mortgagor could set up against a mortgage. that the property covered by it, was used for an illegal purpose, unknown to the mortgagee, and that, therefore, the mortgage was invalid."

The court granted that if this were a proceeding *in quo warranto*,—to attack the organization of the corporation, or an indictment under the Illinois statute, or an action against a member of the combination to enforce any of the provisions of the original contract, its validity would become an important question.

A late issue of the *Harvard Law Review* contains an interesting criticism of a recent California case, wherein the facts are most peculiar, and the law applicable to them correspondingly scant. The case—People v. Lewis, 57 Pac. Rep. 470—involved a question of "suicide after assault." It appeared that one Farrell, during an altercation, was shot by the defendant so that, according to expert medical testimony, death must have resulted within an hour. Shortly after the shooting the victim by cutting his throat made a wound sufficient in itself to cause death in much less than an hour. The defendant was convicted of manslaughter, and, on appeal, the court affirmed the conviction, declaring that the two wounds concurrently contributed to cause death, and the defendant was accordingly responsible.

An exactly similar case has so seldom arisen that a clear statement of the law is difficult to find. Much of what is said on the topic by text-writers is based upon the remarks in 1 Hale P. C. 428. But the illustrations there given assume either that the first wound was not itself mortal or that death was hastened by unskillful medical treatment. Neither instance is strictly in line with the circumstances of the present case. In State v. Scates, 5 Jones (N. Car.), 420, however, it

was held that, where the victim of a mortal blow received subsequent fatal injuries from a second person, the first wrongdoer must be acquitted.

The decision of the court in the principal case, says the *Harvard Law Review*, is not easy to justify. To hold the defendant guilty of murder it is necessary to establish an unbroken causal relation between his act and the death of the victim. Unless his act was partly or wholly the cause he cannot be responsible. If the deceased because of pain or fright had so far lost his self-control as not to be responsible for his act, the defendant ought to be convicted. But in this case it does not appear that such were the facts. Moreover, it is unsatisfactory to say that "but for" the first wound the second would not have been given; yet this is suggested with favorable comment. Again, it is clearly erroneous to regard the defendant's act as the last wrongful act in the series which resulted in death. To say that the two acts "concurrently contributed" is little more than a recognition of the physical fact that the deceased at the time of his death was bleeding from both wounds. Failure to establish the causal relation, then, necessarily makes the suicide a subsequent independent act for which the doer alone is responsible. The defendant, therefore, should have been held only for the criminal assault.

NOTES OF IMPORTANT DECISIONS.

GIFTS—DEPOSITS IN BANK—SURVIVORSHIP.—In Denigan v. San Francisco Sav. Union, 59 Pac. Rep. 390, decided by the Supreme Court of California, it was decided that where a wife deposits money, being her separate property, in a bank, the account being opened in the names of the husband and wife, "payable to either," that fact alone does not import a gift to the husband, there being no evidence tending to show a purpose on the wife's part to pass the title. It was also held that a deposit in a bank, made by a wife, of money which is her separate property, in the names of the husband and wife, "payable to either," does not give the husband such a joint interest in the deposit as to enable him, as survivor, to maintain a claim thereto against a wife's administrator. The court said in part: "What has been said in the opinion in Denigan v. Society in reference to the proposition that by the deposit Ellen made a gift to her husband, is applicable here. Denigan v. Hibernia Sav. & Loan Society, 59 Pac. Rep. 389, citing among other cases the following authorities: Grey v. Grey, 47 N. Y. 552; *In re* Ward, 2 Redf. Sur. 251; Orr v. McGregor, 43 Hun, 528; Shuttleworth v. Winter, 55 N. Y. 624; Beaver v. Beaver, 117 *Id.* 421; *In re* Bolin, 136 *Id.* 177. As therein shown, there is nothing, aside from the form in which the deposit account was opened, to show any intention on her part to part with her interest in the money, or to establish any of the elements of a completed gift. The only difference between the forms of the deposits in the two cases is that in the present case the account was opened in the name of 'Francis and Ellen Denigan, payable to either,' whereas in the other case the account and pass book were entitled 'Frank Denigan or Ellen Denigan in account with the Hibernia Savings & Loan Society.' This difference in the form of the deposit, or of the account, does not, however, change the rule governing the rights of the parties to the money deposited. At the time of the deposit in each case the money was the separate property of Ellen, and, in the absence of any evidence tending to show a purpose or intention on her part to part with the title, it remained her separate property at the time of her death, notwithstanding its deposit in this form. The burden was upon the plaintiff to show that it had ceased to be her separate property, and in the absence of any evidence tending thereto his claim must be denied. In Taylor v. Henry, 48 Md. 550, the deposit stood upon the books of the bank, 'Joseph Henry, Margaret Taylor, and the survivor of them, subject to the order of either.' The money was the property of Joseph Henry at the time it was deposited, and upon his death his sister Margaret claimed it by virtue of this form of the account. The court held that she was not entitled to it, saying: 'The whole question depends upon the meaning and intention of the deceased in making the deposit in the form adopted, as gathered from the entry in the bank book and all the circumstances surrounding the deceased at the time;' and, after holding that the words 'and the survivor of them' did not import a gift, said: 'Here the deposit was in the joint names of the deceased and his sister, and the survivor of them, but subject to the order of either. Having thus retained the power to draw out the money, the deceased did not devest himself of dominion and control over the fund. He could have drawn out every dollar after the deposit, or at any time up to the moment of his death, and applied it in any manner he might have thought proper. It is not contended that the sister had the least right or interest in the money before the deposit; nor is it contended that she acquired any interest therein otherwise than by the supposed gift of the brother, and the only evidence relied on to support the *factum* of the supposed gift is the form of the entry in the bank book. But, as will be observed, there are no terms in the entry that import of themselves an actual present donation by the brother to the sister, and the dominion retained by the brother over the fund enabled him to displace and utterly

destroy all power conferred upon the sister in respect to the fund.' The same principle was afterwards maintained in Gorman v. Gorman, 87 Md. 338, 39 Atl. Rep. 1038. In Schick v. Grote, 42 N. J. Eq. 352, 7 Atl. Rep. 852, a deposit had been made in the following form: 'Bank for savings in account with August Grote and wife, Edvina, or either.' The money was the property of Mr. Grote, and after his death it was claimed, in a suit for the same by his wife, that by depositing it in this form he had made her a gift of it. The court held otherwise, saying: 'The form of the account in which the deposit was made is not evidence of gift to the wife.' In Noyes v. Institution, 164 Mass. 583, 42 N. E. Rep. 103, it was held that a deposit by Annie M. Pike, under an account headed 'Annie M. Pike and Mary L. Hewett, payable to either or the survivor,' remained the property of the original depositor, and that after her death her executors were entitled to the same. The cases cited by the respondent do not contravene the rule held in the above cases. In Mack v. Bank, 50 Hun, 477, 3 N. Y. Supp. 441, cited by him, there was testimony before the court tending to show that after the deposit had been made the depositor came to the bank with his mother, and had the account changed to their joint names, and afterwards made a gift of the deposit to her. In Bank v. Murphy, 82 Md. 315, 33 Atl. Rep. 640, the only question presented for determination was the liability of the bank upon its contract. At the time the deposit was made there was written at the head of the account in the bank book, at the request of the depositor, an agreement that at the death of either the balance should belong to the survivor. After his death the bank paid the balance to the other. In an action by his executors against the bank to recover the deposit, judgment was given in favor of the bank upon the ground that in making the payment to the survivor the bank had merely carried out its contract, and could not be required to pay the same again."

PERSONAL SERVICES RENDERED BY WIFE TO HUSBAND UNDER CONTRACT.

Under the modern statutes removing the disabilities of a married women, can a husband employ his wife and bind himself by the agreement to pay her for her services, and are his creditors bound by such an agreement? To reach a proper answer to this question it is necessary to determine the right of a husband at common law to his wife's services and earnings. Under the common law a wife's earnings belonged to her husband, even though received by her under an employment with a third person. "According to the common law rule, the earnings of the wife are always the property of the husband just as much as are the earnings of his own hands. He was entitled to her earnings, because he was bound for her support, and this, whether she earned much or little. If she engage in any trade or business, the profits of such trade or business belong to the husband, for they are as much the earnings of the wife as any other income produced by her labor and skill."[1] The husband having a property in his wife's earnings could make a gift of them to her, just as he could of any other property he owned, and the person against whom she sought a recovery for such services rendered him could not successfully dispute her right to maintain the action.[2]

Instances of such relinquishments occur at an early date. Thus a widow claimed £100 out of her husband's estate. It appeared that whenever anyone came to buy fowls, pigs and the like, the husband would say he had nothing to do with those things, they were his wife's. At one time it was shown he had said he had borrowed £100 from his wife, which she had accumulated by the sale of fowls, pigs and small produce, raised on

[1] Jenkins v. Flinn, 37 Ind. 349; Baxter v. Prickett, 27 Ind. 490; Switzer v. Valentine, 4 Duer, 96; Yopst v. Yopst, 51 Ind. 61; McDavid v. Adams, 77 Ill. 155; Hawkins v. Providence R. R. Co., 119 Mass. 596; Bucher v. Ream, 68 Pa. St. 421; Offley v. Clay, 2 Man. & Gr. 172; Gould v. Carlton, 55 Me. 511; Bowden v. Grey, 49 Miss. 547; Cramer v. Redford, 2 C. E. Green, 367; Jones v. Reid, 12 W. Va. 350; Kelly v. Drew, 12 Allen, 107; Glaze v. Blake, 56 Ala. 379; Douglas v. Glausman, 68 Ill. 107; Morgan v. Bolles, 36 Conn. 175; Mitchell v. Seitz, 94 U. S. 580; Woodbeck v. Havens, 42 Barb. 66; Reynolds v. Robinson, 64 N. Y. 589; Elliott v. Bentley, 17 Wis. 591; Duncan v. Rosselle, 15 Iowa, 501; Gramling v. Dickey, 118 N. Car. 988; Petingale v. Barker, 21 D. C. 156; Grant v. Sutton, 90 Va. 771; Brittain v. Crowther, 12 U. S. App. 148; Hariston v. Hariston (S. Car.), 14 S. E. Rep. 634; Board v. Brown, 4 Ind. App. 288; Citizens' St. Ry. Co. v. Twiname, 121 Ind. 375. The removal of a married woman's disabilities to contract does not enable her to contract with her husband; for by such removal his disability to contract with her is not removed. Heacock v. Heacock (Iowa), 79 N. W. Rep. 353.

[2] Farman v. Chamberlain, 74 Ind. 82; Mason v. Dunbar, 43 Mich. 403; Cooper v. Ham, 49 Ind. 393; Cranor v. Winters, 75 Ind. 301; National Bank v. Sprague, 5 C. E. Green, 13; Quidort v. Pergeaux, 3 C. E. Green, 472. The last two cases hold that his creditors cannot object to the relinquishment of her services by her husband. In Alabama the opposite is held. Boyett v. Porter, 80 Ala. 476; Bynum v. Frederick, 81 Ala. 480. These last two cases hold that he may revoke his relinquishment.

her husband's premises. It was insisted that the husband only borrowed his own money when he borrowed from his wife, and, therefore, his estate was not liable. But Lord Chancellor Talbott decreed that the widow was a creditor, observing "that the courts of equity have taken notice of and allowed *femes covert* to have separate interests by their husband's agreement; and this £100 being the wife's savings, and there being evidence that the husband agreed thereto, it seemed but a reasonable encouragement to the wife's frugality, and such agreement would be of little avail were it to determine by the husband's death."[3] Where a wife saved part of the money her husband gave her for family expenses, and also laid up money received from boarders and sewing she took in, all with her husband's consent, during a period of eighteen years, and invested it in real estate, it was held that the real estate was hers, the husband by his acts having given the money thus accumulated to her. "A gift to the wife of her own earnings, either from her labor, as for sewing, or from the profits of her boarders, as of her savings from moneys furnished her for her own personal expenses, as her household expenses, may be made out by circumstances, and, when so made out, is as effectual as if proven by express contract. Especially does the implication of a gift to her sole and separate use arise where, as in this case, the wife, with the assent of the husband, loaned out such earnings and savings in her own name, or invested it in realty, taking title to herself."[4]

A husband agreed with his wife that she should have the money paid by a boarder in the family; and it was held that this was a valid contract, and that she was entitled to all the money thus paid her.[5] A statute providing that neither husband nor wife can recover compensation for services rendered for the other does not prevent a wife from claiming the profits arising from keeping boarders, where the husband has relinquished all claims thereto.[6] Where a wife gathered and sold berries, and took in boarders when her husband was away, and on his return at his request she took up a mortgage on his farm and had it assigned to her, under an agreement with him that she should hold it as a claim against him for the amount of money she had paid out of her earnings to take it up, it was held that she could enforce this mortgage against him and his estate, even as against the claims of his creditors. This decision contains an excellent description concerning the dealings between husband and wife and what is sufficient to constitute a valid agreement between them concerning her wages.[7] In Vermont, it was held if a husband allow his wife to retain money received for boarding her father in their household it is a gift to her, and he cannot reclaim it, nor can his creditors.[8] A husband was elected sheriff of his county. He was entitled to receive from the county fifty cents a day for boarding prisoners. He wanted to move his family into the jail and have his wife board the prisoners, but she objected; and he then agreed with her that if she would move with him into the jail and board the prisoners she should have all the money he would receive for such services. She did so, performed the labor; and it was held to be a valid contract. The court, in passing on the case, said: "That it is the duty of the wife, as a helpmeet, to attend without compensation all ordinary household duties, and labor faithfully to advance her husband's interest, is true. Yet, it is certainly not her duty, unless she desires to incur it, to undertake the boarding of a large number of persons who may, for the time being, come under the charge of her husband. These defendants

[3] Slanning v. Style, 3 P. Wms. 334. See a very similar case, Snodgrass v. Hyder, 95 Tenn. 568, 32 S. W. Rep. 764.

[4] Carpenter v. Franklin, 89 Tenn. 144, 14 S. W. Rep. 484.

[5] Riley v. Mitchell, 36 Minn. 33, 29 N. W. Rep. 588; Farrell v. Harrison, 14 N. Y. Misc. Rep. 462, 35 N. Y. Supp. 1029; Lashaw v. Croissant, 88 Hun, 206, 34 N. Y. Supp. 667, 68 N. Y. St. Repts. 395; Stamp v. Franklin, 144 N. Y. 607, 39 N. E. Rep. 634; Sands v. Sparling, 82 Hun, 401, 31 N. Y. Supp. 251, 63 N. Y. St. Repts. 558; Diefendorff v. Hopkins, 95 Cal. 343, 28 Pac. Rep. 265, 30 Pac. Rep. 549. But there must be a contract to that effect. Reynolds v. Robinson, 64 Barb. 589; Porter v. Dunn, 131 N. Y. 314; Barnes v. Moore, 86 Mich. 585; Poffenberger v. Poffenberger, 72 Md. 321; Bloodgood v. Meissner, 84 Wis. 452; Hamil v. Henry, 69 Iowa, 752.

[6] Carse v. Reticker, 95 Iowa, 25, 63 N. W. Rep. 461. Under Pennsylvania Act, June 3, 1887, property of every kind owned, acquired or earned by a married woman before her marriage shall belong to her, the earnings of a wife by taking in boarders belong to her. Rafferty v. Rafferty (Com. Pl.), 5 Pa. Co. Ct. Repts. 453.

[7] Pelterson v. Mulford, 36 N. J. L. 481.

[8] Potter v. Potter, 64 Vt. 298, 23 Atl. Rep. 856.

have the undoubted right to contract with each other with reference to the board to be furnished the inmates of the jail the same as if the marital relation did not exist. J. M. Reticker [the husband] had the contract with the county, and could sublet it to whomsoever he wished,—even to his wife if she saw fit to engage in the work. If there had been no relinquishment by the husband to the earnings of the wife accumulated while engaged in a separate business for herself, the rule might be different; but here, as we have seen, the husband expressly and completely abandoned all the claim thereto."[9]

But there must be a relinquishment on the part of the husband to her of services or earnings or a gift to her of the income arising from taking in boarders in the particular instances given, to enable her to successfully claim them. The relinquishment may be by express words, or be evidenced by conduct between them, or by entering into an arrangement that, if pursued, would be incompatible with his right to claim them. Merely taking a boarder into the family, even a sick boarder requiring special services on the part of the wife, is not a relinquishment to her on the husband's part of the money the boarder pays for his board.[10] A husband permitted his wife's earnings to accumulate with her employer, for the express purpose of procuring a fund for the purchase of a home for her, and he, both before and after the purchase, always spoke of the money as hers, and never on any occasion as his own. It was held that the inference was irresistible that he had given it to her, and the fact that the property purchased with the money was taken in his name was not sufficient to overcome the undisputed evidence of his declarations that it was paid for with her money.[11]

We have been discussing the right at common law of a husband to his wife's earnings, and what will amount to a relinquishment of them on his part. At the present day statutes usually give a wife her earnings accruing

[9] Carse v. Reticker, 95 Iowa, 25, 63 N. W. Rep. 461.

[10] Board v. Brown, 4 Ind. App. 288; Bolman v. Overall (Ala.), 2 South. Rep. 624. If a wife work for her husband in his store under no agreement for wages, and is injured by a common carrier, she cannot recover any damages because of her impaired ability to earn wages, although she may for physical injuries. Citizens' Street Ry. Co. v. Twiname, 121 Ind. 375; Urensky v. Day Dock, 118 N. Y. 304; Blaechinske v. Howard Mission, 130 N. Y. 497.

[11] Grantham v. Grantham, 34 S. Car. 504, 13 S. E. Rep. 675. In an instance of this kind it must clearly appear that the husband intended to divest himself of all interest in her earnings. Bolman v. Overall, 86 Ala. 168, 5 South. Rep. 455; Musgrave v. Parish (Ky.), 11 S. W. Rep. 464. Where a husband leaves his family on account of domestic infelicity, and during his absence determines to never resume marital relations with her, but to provide for his family when necessary; and his wife and children live together, supported by her exertions, this is a separate living, within the meaning of the Civil Code of California, providing that the wife's earnings, "while she is living separate from her husband," are her separate property. Loring v. Stuart, 79 Cal. 200, 21 Pac. Rep. 651. If a husband consent that his wife may take boarders and receive the proceeds for application on a contract which he has made for the purchase of real estate, and the money thus acquired by the wife is applied on such contract, the money is hers and not his, her right to it being founded on a meritorious consideration; and her title to the land will prevail against a creditor of her husband who gave credit after the property was paid for, though the conveyance to her be of later date than the giving of credit, it not appearing that such credit was given upon the apparent ownership of such property or that the husband was in possession. McNaught v. Anderson (Ga.), 3 S. E. Rep. 668. See Carter v. Worthington (Ala.), 2 South. Rep. 516. A statute providing that a married woman may receive the wages of her personal labor, keeping boarders when conducted by her, is such an independent employment as entitles her to maintain an action for the money owed by the boarders she thus keeps. Hedge v. Glenny, 73 Iowa, 513, 39 N. W. Rep. 818. Under the statutes of West Virginia, relating to married women, where a wife, while living with her husband, earned money, by sewing and washing, and by her husband's consent bought two lots with the money, taking the deed to them in her name, it was held that her husband's creditors had a right to subject such lots to the payment of their claims. Bailey v. Gardner, 31 W. Va. 94, 5 S. E. Rep. 636. See also Lanham v. Lanham (W. Va.), 4 S. E. Rep. 273. Acting as a temporary nurse is not engaging in trade or business, within Act Pa., June 3, 1887, empowering a married woman to sue in her own name where she so engages, and in such case the husband may sue alone to recover for such services. Himes v. Sheneman (Pa. Com. Pl.), 9 Pa. Co. Ct. Repts. 363. But see Pennsylvania cases cited hereafter. A wife may rent a farm from her husband, and the crops she raises upon it will be her individual property. Woodyatt v. Connell, 38 Ill. App. 480. A husband permitted his wife to sell cakes and pies, and to keep the money she received for them. With this money she purchased a negro boy, having kept the money as her separate property. It was held that the negro was hers. Oglesby v. Hall, 30 Ga. 386. A sealed note was given a wife for money she had earned during coverture teaching school, and her husband never made any claim to her earnings or the note. It was held, on his death, that the note was hers and not his. Boozer v. Addison, 2 Rich. Eq. (S. Car.) 273. In Maryland, a washerwoman's wages were taken by her husband (Neal v. Hermans 65 Md. 474), but in Iowa she was permitted to recover damages because of inability to do washing caused by an injury received because of a defective street. Fleming v. Town of Shenadoah, 67 Iowa, 505.

when employed by some person not her husband. It is generally said that the usual married woman's acts do not change the relation of husband and wife, so far as her services rendered for him is concerned; but this is not strictly true. There is no doubt that there are many things to be performed by a wife that she cannot enter into a contract with her husband for pay for her services. A husband cannot enter into a contract to charge her for keeping and clothing her;[12] nor could she make such a contract with respect to clothing or keeping herself. Such contracts are contrary to public policy. So a contract by a husband to pay his wife for keeping his house, attending to his children, washing and mending his clothes, nursing him and his children while sick, and a thousand and one acts necessary to the maintenance of the family and household, such as are termed her "marital duties," her "household duties," or her "Scriptural duties," is void; because contrary to public policy, and also for the reason that they devolve upon the wife to perform according to all modern standards of civilized life.[13] The services rendered by a wife in her family, in the household, as the "help-meet" of her husband, are radically different from those she may render to a third person outside the household. These services are extraordinary services; and no obligation to perform them rests upon her. She is not bound to perform them; and if she does perform, the act is voluntary. A refusal to perform them at the request of her husband is not a violation of her matrimonial vows or obligations.

So if she perform services directly for her husband similar to those she may be employed by a third person, such services do not for that reason lose their extraordinary character. The service rendered in clerking in her husband's store are as much extraordinary service as if rendered in the store of another. She is under no legal obligation to clerk in his store. Such services are voluntary on her part, so far as their legal *status* is concerned. No court would condemn her action if she refused to perform these extraordinary services; no rightly minded person would think her in fault; the world would not put its seal of disapproval upon her, but would rather say that the husband had made an unjust demand of her. Modern statutes have swept away many of the disabilities of a married woman at common law. The theory of the common law was that the entire separate legal existence of the wife was merged in that of her husband who was the *dignor persona*. But so many innovations have been made upon the common law in relation to the *status* of married women in many, if not all, of the States, that it can no longer be said that that law is in force as a rule with reference to married women, except in optional cases. The systems of law now in force in many States with regard to married women have been evolved, not only from the common law of England, but more largely, perhaps, out of the civil law of Rome. It has been the tendency of such legislation to combine the better features of the two systems. A marked feature of this legislation has been the constant disposition toward abrogation of the common law unity of husband and wife, and to clothe the wife with new rights and enable her to enforce them. By the civil law there was no such thing as a legal unity of the husband and wife in relation to their civil and property rights. Their marriage was more in the nature of a partnership, and as a necessary result there was no such a thing as the merger of the inferior being into that of the superior. "She never surrendered any portion of her separate property, whether personal or real, by virtue of the marriage, and she remained liable for her individual debts during, as well as before, the existence of the marital relations. She was to all intents and purposes a *feme sole*."[14] Since the enactment of these statutes, and in the light of modern decisions interpreting and construing them, can a wife enter into a contract of serv-

[12] Corcoran v. Corcoran, 119 Ind. 138.

[13] Grant v. Grant, 41 Iowa, 88. "It was her duty as a wife, to do and superintend the doings of all acts and things as were necessary for the due and proper concerns of the household, so far as her ability and the means supplied by her husband were adequate for the purpose. This included, among other things, the keeping of the house in good and clean condition, the proper cooking and furnishing at reasonable hours of food for her husband and the children of the household, due attention to his wardrobe, and nursing and attention to them in sickness. It included, also, attention to her boarder, with the exception of attention to her wardrobe and nursing her in sickness." Hogg v. Lobb, 7 Houst. 399, 32 Atl. Rep. 631. Much to the same effect is Hensley v. Tuttle, 17 Ind. App. 253; Mewhirter v. Halten, 42 Iowa, 288; Tuttle v. Chicago, etc. Ry. Co., 42 Iowa, 518; Brooks v. Schwein, 54 N. Y. 343.

[14] Postlewaite v. Postlewaite, 1 Ind. App. 473.

ice with her husband? In an Indiana case this question was answered indirectly in the affirmative. A husband had a partnership in the sale of merchandise, and he employed his wife to work in the store. The partnership, by agreement, was dissolved, the husband retiring, and his partner agreeing to pay all the debts of the firm. The wife sued the remaining partner for her service, and he set up as a defense that he had paid her husband for her services. But the court held that this was no defense and that he was liable to her. The court declined to say whether or not she could sue the firm or both partners for her services; but did decide that under the circumstances she was equitably entitled to compensation, and that her claim constituted a valid debt against the firm for which the remaining partner, by his agreement to pay the debts of the firm, was liable.[15] A statute in Connecticut provided that "All property hereafter acquired by any married woman shall be held by her to her sole and separate use." Under this statute it was held that money earned by a wife in the service of a third person was "property" within the meaning of the act.[16]

This is a case very much in point; for, if her services are "property," and she is entitled to "all the property" she acquires, it makes no difference whether she acquires that property in the service of her husband or in that of another, it is still property, and still her own. In Pennsylvania a statute of 1893 provided that a "married woman may, in the same manner and to the same extent as an unmarried person, make any contract in writing or otherwise, which is necessary, appropriate, convenient or advantageous to the exercise or enjoyment of the rights and powers granted" by an act of 1887, except as accommodation indorser, or in conveyance of her land without her husband's consent. The act of 1887 provided that she should "have the same power as an unmarried person to acquire, own, possess, control, use, lease, sell or otherwise dispose of any property, real, personal or mixed, and either in possession or expectancy." The supreme court of that State held that under this act of 1887 her earnings were a specie of property and belonged to her and not to her husband, and that she should have them when they were the reward of her personal service, her title to them being absolute.[17] Afterwards arose a second case concerning the personal earnings of a married woman. In that case a widow sought to recover for services she had rendered her husband, under a contract with him, as a cook outside of his family; and it was held that she might recover the amount he owed her under this contract, and might also stand as a preferred creditor. "The word 'acquired' in the act of 1893," said the court, "we think includes everything that would be included in the word 'earned' in the act of 1887. A reading of the two acts together indicates clearly that the latter one was intended to remove some doubts about the construction of the first, and to place the rights and powers of a married woman upon a broader, more comprehensive and better defined basis than was accomplished by the act of 1887. * * * In the present case everything that could be done was done by the husband to enable the wife by her own personal services to acquire for herself alone the reward of that service, and no rights of his, independent of contract, are in the way of her recovery."[18] The court took occasion to say that by employing his wife and agreeing to pay her for her services, the husband abandoned all his claims to them.[19] Several cases where money had been paid as for her services, and it was sought to take it from the wife, have arisen. Thus where a wife had worked under contract for pay in her husband's laundry, and had received the money due her for her services, the court refused to compel her to deliver it up to greedy creditors. "There was nothing unfair or unconscionable in such an agreement [for weekly wages], and the consideration was ample.

[15] Powers v. Fletcher, 84 Ind. 154.

[16] Shea v. Maloney, 52 Conn. 327. "We cannot entertain any doubt upon the point. It would be altogether too narrow a construction to put upon such a remedial statute to hold that mere visible and tangible property was intended—something capable of delivery or of actual possession. The word is often used in a large sense to indicate what a man owns, or the estate he has left upon his death; and money for personal services is as much a part of his assets as a horse or a piece of land. The liberal construction intended is shown by the use of the word 'all' in connection with it—'all property acquired.'"

[17] Lewis' Estate, 156 Pa. St. 337.

[18] Nuding v. Urich, 169 Pa. St. 289, 32 Atl. Rep. 409; Smith v. Axe, 14 Pa. C. C. Rep. 532.

[19] On this point see also Carpenter v. Franklin, 89 Tenn. 144, 14 S. W. Rep. 484.

By it the husband was relieved from employing help, and he only agreed to give his wife the wages he would otherwise have given such employee. The contract was not enforceable at law, but it has been executed, the wife has performed the service, and has received her wages. Equity will not deprive her of the money, nor of her property in which she has invested it."[20] In New York it was decided in 1873 that a note given a wife by her husband for aid in the out-of-door work upon his farm, and for the purpose of providing for her support and maintenance, was void. The court said that the law "never has recognized the right to compensation from her husband on account of the peculiar character of her services." No statute is cited as having any effect upon the decision or as changing the common law.[21] In a subsequent case a husband and wife labored together for a third person, under no special agreement that she was to receive the portion she earned; and the court held that she was not entitled to it, although a statute provided "that which she acquires by her trade or business, labor or service, carried on or performed on her sole or separate account," should be hers. There was nothing to show that she had elected to labor on her own account.[22]

In 1892 a case arose in the same State in which a wife sought to recover damages because of injury to herself and consequent inability to earn wages. It appeared that she had been working for her husband in his tailoring shop, and had received as wages five or six dollars per week, most of which she spent for her family. The court held that she could not recover any damages because of her decreased ability to earn wages, and added that a contract by her husband to pay her for her services was void, the statute quoted above not having changed the rule of the common law. "The fact," said the court, "that he cannot require her to perform service for him outside of the household does not affect the question, for he could not require it at common law. Such services as she does render him, whether within or without the strict line of her duty, belong to him. If he pays her for them it is a gift. If he promises to pay her a certain sum for them it is a promise to make her a gift of that sum. She cannot enforce such a promise by a suit against him."[23]

Quite recently the right of a husband to contract with his wife concerning her services came up incidently in a case brought by his creditors to set aside a mortgage he had given her. Shortly after their marriage in 1863 a farmer agreed with his wife that she should have the money she made by raising chickens and making butter on the farm. If she desired she could buy the groceries. This condition of affairs existed for twenty-seven years, when she discovered he owed their son and others. They had a settlement, and he gave her his note, secured by mortgage on the farm, for the amount supposed to have been accumulated by her and which she had loaned to or let him have. This mortgage was held void as against creditors and the note to be without consideration. It was said that husband and wife had no power to make such a contract, that it was a subject-matter about which they could not contract. "The business relation," said the court, "shown to exist between appellant and her husband is common to farmers' families, springing from mutual confidence and the exigencies of farm life, and it would be a novel and dangerous doctrine to hold that a wife's dominion over the domestic dairy and poultry products, and the fund arising therefrom, with the husband's assent, constituted her separate business, within the meaning of the statute.[24] We are of the opinion, therefore, that the money appellant let her husband have, as arising from the family produce, was money received by her while in the service of her husband and

[20] Sing Bow v. Sing Bow (N. J. Eq.), 30 Atl. Rep. 867. See also Trasch v. Wirtz, 34 N. J. Eq. 128; Peterson v. Mulford, 36 N. J. L. 487; Costello v. Prospect Brewing Co., 52 N. J. Eq. 559; Coyne v. Sayre, 54 N. J. Eq. 708; Hagerman v. Buchanan, 45 N. J. Eq. 301; Stall v. Fulton, 1 Vroom. 430; J. M. Houston Grocery Co. v. McGinnis (Ky.), 45 S. W. Rep. 514.

[21] Whitaker v. Whitaker, 52 N. Y. 368.

[22] Birbeck v. Ackroyd, 74 N. Y. 356, 11 Hun, 365. See Bean v. Kish, 4 Hun, 171.

[23] Blaeinske v. Howard Mission, 130 N. Y. 497, 29 N. E. Rep. 755. See also Stemp v. Franklin, 144 N. Y. 607, 39 N. E. Rep. 634, 64 N. Y. St. Repts. 251.

[24] The statute referred to provides that "a married woman may carry on any trade or business and perform any labor or service on her sole and separate account. The earnings and profits of any married woman, accruing from her trade, business, services, or labor, other than labor for her husband or family, shall be her sole and separate property." Rev. St. 1897, § 7310.

family, and belonged to her husband, and furnished no consideration for the notes and mortgages involved in this suit."[25]

Indianapolis, Ind. W. W. THORNTON.

[25] Kedey v. Petty, 54 N. E. Rep. 798. In the case of Roche v. Union Trust Co., 52 N. E. Rep. 612, the Appellate Court of Indiana held that where a wife performed services in her husband's store as clerk at an agreed stipulation, and then after receiving the money and placing it in bank to her credit or in a building association, loaned it to him, could enforce the note thus given for the money borrowed. The court even went farther and held a note valid that was given for wages due her that he had never paid. A petition for a rehearing was granted and the opinion withdrawn. After this the case was affirmed by agreement. The opinion given cannot, therefore, be regarded as an authority.

USURY—NATURE OF CONTRACT.

WEAVER v. BURNETT.

Supreme Court of Iowa, February 7, 1900.

An agreement by a borrower to pay for a loan the highest legal rate of interest, and in addition thereto to divide with the lender the profits made in discounting certain notes to be taken up with the money borrowed, is usurious, under Code, § 3040, providing that no person shall receive, directly or indirectly, in money or in any other manner, any greater sum than by law allowed for the loan of money.

DEEMER, J.: The note which lies at the foundation of this suit is for $1,300, and bears interest at the rate of 8 per cent. It was given to afford defendant Burnett the means with which to take up three other notes of the said Burnett, antedating the one in suit, aggregating $1,400, and upon which interest had accrued so that the total amount thereon was about $1,580. Defendant Burnett claims that he received but $1,200 on the $1,300 note, and that the excess was for the use of the money loaned. On the other hand, plaintiff, while admitting that he gave Weaver but $1,200 in money, says that the additional $100 was put in the note because of an arrangement made between them to the effect that he (plaintiff) should have one-half the profits made by Weaver in discounting the $1,400 notes; that Burnett procured them for $1,200, thus saving $380, but that he represented to plaintiff he made but $200, and one-half that amount was included in the $1,300 note, as defendant Burnett was unable to pay it in money. That there was a loan of but $1,200 by plaintiff to defendant is conceded, and the only question in the case is, was the loan usurious? Section 3040 of the Code reads as follows: "No person shall, directly or indirectly, receive in money or in any other thing, or in any manner, any greater sum or value for the loan of money, or upon contract founded upon any sale or loan of real or personal property, than is in this chapter prescribed." The rate prescribed in the chapter is 8 per cent. for money due by express contract when the agreement to pay it is in writing. Whether or not the contract is usurious does not depend upon the form the transaction is made to assume. Courts always look beyond the mere form, and search diligently for the substance and intent. Seekel v. Norman, 71 Iowa, 264, 32 N. W. Rep. 334. Of course, there must be an unlawful agreement for the payment of a greater sum for the loan of money than the law allows, else the contract will be held good. Jones v. Berryhill, 25 Iowa, 289. But if there be such an agreement, no matter what form the transaction may be made to assume, it will be held usurious. Even if we adopt plaintiff's theory of the case, there was a loan of $1,200 to the defendant, which he (defendant) agreed to repay at a certain time, and without contingencies, together with the highest rate of interest which the law permits. But he says that, in addition thereto, he was to have one-half the profits that defendant might make in the use of the money so loaned. Is such a transaction usurious? We are quite willing to agree that, if there was a consideration entirely separate and distinct from the loan or forbearance for the defendant's promise to pay plaintiff one-half the discount he received in taking up $1,400 in notes, such agreement would not make the transaction usurious. See Neefus v. Vanderveer, 3 Sandf. Ch. 268. But such is not the fact. Plaintiff was to have one-half the discount, in addition to the legal rate of interest, in consideration of the use of his money, and nothing less. If there was any other thing that he did or agreed to do, in consideration of the defendant's promise to pay this additional compensation, we have failed to find it. Plaintiff did nothing more than loan the defendant $1,200. True, defendant agreed to pay that amount on a particular debt, and in so doing he made something over $380; but his agreement to pay plaintiff the half of that sum was in consideration of the loan, and as compensation for the use of the money. The transaction, even from plaintiff's standpoint, will bear no other interpretation. We are also ready to agree with plaintiff's counsel when they say that a loan is free from usury where, in lieu of interest, a share of the profits expected to be realized by the borrower is agreed *bona fide* to be given to the lender as compensation for the loan. Johnston v. Ferris, 14 Daly, 302; Goodrich v. Rogers, 101 Ill. 523. But it is also true that a stipulation for a share of the profits in addition to the principal and legal interest is usurious. Sweet v. Spence, 35 Barb. (N. Y.) 44. The rule is well stated by Chancellor Walworth in Colton v. Dunham, 2 Paige, 269, as follows: "Whenever, by the agreement of the parties, a premium or profit beyond the legal rate of interest, for a loan or advance of money, is, either directly or indirectly, secured to the lender, it is a violation of the statute, unless the loan or advance is attended with some contingent circumstances by which the

principal is put in evident hazard. A contingency merely nominal, with little or no hazard to the principal of the money loaned or advanced, cannot alter the legal effect of the transaction. * * * Where there is a negotiation for a loan or advance of money, and the borrower agrees to return the amount advanced at all events, it is a contract of lending; * * * and whatever shape or disguise the transaction may assume, if a profit beyond the legal rate of interest is intended to be made out of the necessities or improvidence of the borrower, or otherwise, the contract is usurious." See, also, Brakeley v. Tuttle, 3 W. Va. 133; Cleveland v. Loder, 7 Paige, 557; Leavitt v. Le Launy, 4 N. Y. 363; Browne v. Vredenburgh, 43 N. Y. 195; Barnard v. Young, 17 Ves. 44; Clift v. Barrow, 108 N. Y. 187, 15 N. E. Rep. 327, —which illustrate the exception stated by Chancellor Walworth. See also Canal Co. v. Vallette, 62 U. S. 414, 16 L. Ed. 154. The case is not ruled by Comstock v. Wilder, 61 Iowa, 274, 16 N. W. Rep. 108, relied upon by plaintiff. There the lender received no more than the legal rate of interest for his loan. We are of opinion that, no matter what the point of view, the contract sued on is usurious. Plaintiff should have judgment for the sum of $1,200, without interest or costs, and a decree foreclosing his mortgage for the amount of said judgment. Judgment should also be rendered against defendant Burnett, and in favor of the school fund of Taylor county, for 8 cents per hundred per year on the said sum of $1,200, and the costs should be taxed to plaintiff. The case is remanded for a decree in harmony with this opinion. Reversed.

Granger, C. J., not sitting.

NOTE.—*Recent Cases on What Constitutes Usury in General.*—Interest reserved on coupon interest notes after their maturity, which were given at the inception of the principal debt to secure the annual interest accruing thereon, is not usurious. Stickney v. Moore (Ala.), 19 South. Rep. 76. A verbal agreement, entered into at the time a note was executed, that a usurious rate of interest shall be paid thereon, renders the note usurious. Roe v. Kiser (Ark.), 34 S. W. Rep. 534. In an action on a note for $400 and interest at the highest legal rate, testimony showing that the maker had in fact received only $390 will not sustain a plea of usury, where the difference between the amounts was taken out to defray certain expenses incurred by the maker in relation to the transaction. Shattuck v. Byford (Ark.), 35 S. W. Rep. 1107. The fact that the company procuring a loan for a borrower advanced for convenience its own money in turning over the net proceeds of the loan to the borrower, and received a portion of the commissions paid by the borrower for negotiating the loan, did not infect the notes given for the loan with usury. Stansell v. Georgia Loan & Trust Co., 96 Ga. 227, 22 S. E. Rep. 898. Where a creditor holding a note for a debt actually due him indorses and delivers it to a bank at a rate of discount greater than the rate of interest allowed by law, but not greater than the rate provided for in the note, the transaction may or may not be a loan, in which the note is delivered as collateral, and hence it is not necessarily void as usurious. Becker's Investment Agency v. Rea (Minn.), 65 N. W. Rep. 928. The price of property sold in good faith may be included in the same security with money loaned, and the fact that the price was large, and more than the property could have been sold for, does not necessarily condemn the transaction as usurious. Saxe v. Womack (Minn.), 66 N. W. Rep. 928. Where one loans money at a lawful rate of interest an exaction by him from the borrower that the latter will give him the option to purchase of him shares of stock at a fixed price, for making the loan, constitutes usury. Hawley v. Kountze, 38 N. Y. S. 327, 16 Misc. Rep. 249. A loan of money by a life insurance company at the full legal rate of interest, payable monthly, and secured by ample real estate mortgage, where the lender required the borrower, as a condition to the making of the loan, to take from it an endowment policy, upon which he should pay monthly premiums, for which the mortgage also stood as security, being subject to foreclosure for default in their payment, is usurious. Miller v. Life Ins. Co. of Virginia (N. Car.), 24 S. E. Rep. 484. In an action on a contract whereby defendant undertook to consign to plaintiff, in consideration of loans by plaintiff to defendant, a certain number of cattle, to be sold on commission, or to pay to plaintiff 50 cents a head for so many of the cattle as he failed to ship, the contract will be held one for usurious interest, where it appears that plaintiff knew that defendant had no cattle to ship, and did not contemplate getting any in the time specified in the contract. Shattuck v. Clark (Tex. Civ. App.), 34 S. W. Rep. 404. Where one buys land, paying therefor by the assignment of notes taken to himself for money loaned at an usurious rate of interest, apparent on the face of the notes, and afterwards the interest is computed at such rate, and a bonus added, and new notes given therefor, together with the amount of the old notes, with a deed of trust by the debtor to assignee to secure their payment, though the new transaction is given the color of being a rescission of the original sale of the land and a resale, it is usurious. Crim v. Post (W. Va.), 23 S. E. Rep. 613. Complainant, having applied to a loan company for a loan of $2,000, entered into a contract with it, secured by mortgage, and providing that he should give to it 10 notes for $300 each, payable in monthly installments of $30, and that, in case of his death before all such payments were made, the unpaid portion of the debt should be released. He also agreed to pass a medical examination, and pay the fee therefor. At the same time, the loan company, pursuant to a general contract between it and an insurance company, obtained a policy on complainant's life, fully indemnifying it from possibility of loss in case of his death before the full payment of his notes. The amount agreed to be paid was largely in excess of the loan, with the highest legal interest and the cost of the insurance. Held, that the contract was usurious. Missouri, K. & T. Trust Co. v. Krumseig, 77 Fed. Rep. 32, 23 C. C. A. 1. Where a father-in-law demanded as a condition of a loan to his spendthrift son-in law that the latter should convey to his own wife a certain tract of land, a conveyance executed by the son in-law in compliance with that condition does not constitute usury, and is not a badge of fraud. Cockrill v. Cockrill (C. C.), 79 Fed. Rep. 143. To show usury, it must appear that unlawful interest was paid to the lender, or that a commission was paid to his agent with his knowledge, or under circumstances from which his knowledge will be presumed, which, when added to the interest paid or to be paid, would exceed the lawful rate. Sherwood v. Haney (Ark.), 38 S. W. Rep 15, 63 Ark. 249. A loan

of money and supplies by a cotton factor to a planter is not rendered usurious by an express agreement by the latter to pay the factor a commission of $1.25 per bale for storage, weighing, and selling cotton shipped to him by the planter. Jarvis v. Southern Grocery Co., 63 Ark. 225, 38 S. W. Rep. 148. Where a note providing for the highest legal rate of interest is given for money and supplies to be furnished, a failure to furnish a part thereof is merely a partial failure of consideration, and does not render the note usurious. Lanier v. Union Mortgage, Banking & Trust Co. (Ark.), 40 S. W. Rep. 466. Charging the maker of a note given for supplies to be furnished, and providing for the highest legal rate of interest, with profits on the supplies furnished, does not render the note usurious, where there was no agreement to pay profits, and the charge therefor had been eliminated on a settlement of the account for supplies. Lanier v. Union Mortgage, Banking & Trust Co. (Ark.), 40 S. W. Rep. 466. Where a debt, including both principal and interest, and due by installments, if paid according to the contract is free from usury, the transaction is not rendered usurious by the voluntary payment of the debt in full before some of the installments mature, although, as a result, the creditor receives, in the aggregate, a sum greater than the principal and the maximum legal rate of interest. Savannah Sav. Bank v. Logan (Ga.), 25 S. E. Rep. 692. Under the provision of Gen. St. 1883, p. 564, that after the death of an obligor a contract, after its maturity, or any judgment thereon, shall only draw 6 per cent. interest, but that such provision shall not affect other surviving co-obligors, payment of interest at 8 per cent. as therein provided, by a surviving husband on a joint note of himself and his deceased wife, given for property conveyed to her, is not usurious. McClure v. Bigstaff (Ky.), 37 S. W. Rep. 294. Plaintiff gave a note for $350, receiving $250 out of the loan made, and testified that, when he signed the note, it was for the sum of $250. Defendant introduced evidence that $250 was paid plaintiff, $35 was retained as interest in advance, and that the other $65 was delivered to a third person for the use of plaintiff and at his request. Held that, according to plaintiff's own evidence it was not a case of usury, but of fraud. Chambers v. Gilbert (Minn.), 70 N. W. Rep. 1077. In an action on a note given for a loan, usury is not shown by evidence that, on several occasions after the loan was made, defendant paid the holder of the note more than was due at that time for legal interest, but which does not show a contract for usurious interest. Rosenstein v. Fox, 150 N. Y. 354, 44 N. E. Rep. 1027. A contract to guaranty payment of notes is not usurious, though the consideration is more than 6 per cent. per annum on the amount of the guaranty, if the transaction was not made to cover a usurious loan. Forgotston v. McKeon, 43 N. Y. S. 939, 14 App. Div. 342. A contract by which a pawnbroker to whom a coat is pledged for $4, at the maximum legal interest, receives 12 cents in addition to the interest for insuring it against damage by moths and dust, is valid, if made in good faith. Stich v. Samek, 43 N. Y. S. 1068, 19 Misc. Rep. 534. One C, upon retiring from a firm of which he was a member, made an agreement with his successors that the money standing to his credit should remain with the new firm as a loan account, drawing 6 per cent. interest; that if C should loan the firm any securities to use as collateral, he would make no charge for the use of them; that the new firm might call upon him to increase his loan account to $50,000; and that, in consideration of the agreement, he should receive $4,000 per year as compensation. C rendered no services for the firm. Held, that the agreement was usurious, and the payment of the $4,000 per year could not be enforced. Gilbert v. Warren, 46 N. Y. S. 489, 19 App. Div. 403. Where a note provided for interest, without specifying the rate, an agreement subsequently indorsed thereon for the payment of interest at 10 per cent. from a date in the past did not render the note usurious under a statute forbidding the charging of interest at a greater rate than 7 per cent. without a written agreement therefor. Harrell v. Parrott (S. Car.), 27 S. E. Rep. 521. Defendant loaned his sister's money to complainant, at 10 per cent. without disclosing his agency, and took a note, payable to a third person, and purporting to bear interest at 6 per cent. The payee indorsed the note, without recourse, to defendant, who, in turn, indorsed it to his sister, and collected and appropriated to his own use the additional 4 per cent. Held, that the money so collected was usury. Tankesly v. Bell (Tenn. Ch. App.), 37 S. W. Rep. 1018. Provisions in a trust deed giving the mortgagee the right to declare the principal due in case of taxation by the State of the deed or debt is not a means of evading the usury law. Glover v. Equitable Mortg. Co., 87 Fed. Rep. 518. Where one borrowing money from a life insurance company taken from it, as a condition of making the loan, an endowment policy, and monthly payments thereon, sufficient in the end to extinguish the loan, but in the meantime to pay interest on the whole amount of the loan at the full legal rate, the transaction is usurious under the laws of Virginia. Brower v. Life Ins. Co. of Virginia, 86 Fed. Rep. 748. A bill seeking to enforce a vendor's lien, and alleging usury in an unliquidated account due from the vendor to the purchaser, extinguishment of which was a part of the consideration of the deed, and asking to have it eliminated, is not wanting in equity, where the vendor had not agreed to allow usurious interest in the account as part of the price. Folmar v. Carlisle (Ala.), 23 South. Rep. 551. Where the lender of money is a lawyer, and, in addition to the highest legal rate of interest, the borrower pays him an additional sum, which he claims was for professional services in looking after the cancellation of a pre-existing lien upon the property pledged as security and in passing upon the borrower's title, but which was, according to the borrower, a part of the consideration of the loan itself, the question whether the transaction was usurious was one of fact, dependent upon the intention of the parties. Sanders v. Nicolson (Ga.), 28 S. E. Rep. 976. The issue was whether a charge above legal interest made by a lender, who was also a lawyer, was for legal services rendered the borrower, or a part of the consideration for the loan. The court charged the jury: "It appears from the evidence that the plaintiff performed some service for the defendant in addition to that of passing the title to the property on which he loaned the money to him (that is to say, he performed some services, it does not appear what, in having a previous mortgage canceled); and I think this would entitle him to charge the fee which he charged, and would thus not make the contract usurious." Held, that this was error. Sanders v. Nicolson (Ga.), 28 S. E. Rep. 976. A note for the price of goods bought on credit is not usurious, though given for a sum 18 per cent. in advance of the agreed cash price of the goods. Rushing v. Worsham (Ga.), 30 S. E. Rep. 541. A principal note contained a promise to pay interest for which notes were also given, this fact being recited in the principal note. Held, that the form of the transaction did not render it usurious, only one payment being intended. Ab-

bott v. Stone, 70 Ill. App. 671. Where the amount to be paid by the borrower of money as principal, interest and cost of collateral insurance on his life for the benefit of the lender exceeds the amount of the loan, with legal interest thereon, and the actual cost of the insurance, the contract is usurious, though the lender agrees to cancel the debt in case of the borrower's death before maturity. Mathews v. Missouri, K. & T. Trust Co. (Minn.), 72 N. W. Rep. 121. An advance to the usual time price of 10 per cent. over the cash price of merchandise sold and advanced on a crop lien bond is not usurious. Churchill v. Turnage (N. Car.), 30 S. E. Rep. 122. A loan by an insurance company, at the full legal rate of interest, on real estate security, where it required the borrower, as a condition to the making of the loan, to take from it an endowment policy on which he should pay monthly premiums, for which the mortgage also stood as security, being subject to foreclosure for default in their payment is usurious. Carter v. Life Ins. Co. of Virginia (N. Car.), 30 S. E. Rep. 341. In computing interest to determine usury, where the right to declare the debt due in case of default is contained in the contract, the title of maturity should be reckoned to the day fixed in the written contract in good faith for the maturity, with grace added unless it is waived; and the time the money was loaned means the date of the contract, unless a future and different date is agreed on for the delivery of the money, or unless the note is dated back by agreement, as a device in either case to cover usury. Seymour Opera House Co. v. Thurston (Tex. Civ. App.), 45 S. W. Rep. 815. It is not usury for a lender charging the highest rate of interest allowed by the statute to require interest for the first year to be paid in advance. Willett v. Maxwell, 169 Ill. 540, 48 N. E. Rep. 473. The mere fact that interest payments upon a loan maturing five years from date have been advanced so that a slightly greater rate of interest than that allowed by law is reserved or secured to the lender will not, of itself, support a finding that the contract was made with a corrupt intent to evade the law, which must appear to render the loan usurious. Swanson v. Realization & Debenture Corp. of Scotland (Minn.), 73 N. W. Rep. 165. Where the interest on a loan was deducted from the face of the note, as paid in advance, and such note bore interest only from maturity, such transaction was not usurious. Webb v. Pande (Tex. Civ. App.), 43 S. W. Rep. 19. A building and loan contract provided for monthly payments to be applied in "premium for precedence" and on interest. Held, in determining whether the contract is usurious or not, the so-called "premium for precedence" must be regarded as interest. Stevens v. Home Savings & Loan Assn. (Idaho), 51 Pac. Rep. 779. A contract whereby the borrower of money agrees to repay to the lender a sum exceeding the amount borrowed, with the maximum legal interest added thereto, although it provides, with certain restrictions, that the portion of the debt remaining unpaid on the death of the borrower within a time fixed shall not be collected, is subject to cancellation, under Gen. St. Minn. 1894, sec. 2217, providing for the cancellation of usurious contracts. Missouri, K. & T. Trust Co. v. Krumseig (U. S. S. C.), 19 Sup. Ct. Rep. 179. Where the parties, in their contract, only intend to charge the legal rate of interest, but, by inadvertence or mistake in calculation, there was included in the contract interest amounting to a few cents more than the legal rate, the contract is not thereby rendered usurious. Rushing v. Willingham (Ga.), 31 S. E. Rep. 154. An intent to evade the usury laws of the State will not be inferred from the mere fact that the payees of a note, executed and delivered in the State, *bona fide* residents of another State, in which the stipulated rate of interest was lawful, made such note payable at their usual place of business in such other State. Ames v. Benjamin (Minn.), 77 N. W. Rep. 230. An agreement between two parties to enter into a joint venture in the purchase or sale of stocks, whereby one party is to furnish the capital to carry on the business, is to share equally in the profits, and, in case of loss, is guarantied not only the return of his investment but a large sum in excess of legal interest thereon, though unconscionable, is not usurious, where it is not shown to be a mere device to conceal a loan of money. Orvis v. Curtiss, 157 N. Y. 657, 52 N. E. Rep. 690. Where, as a condition of a loan by a life insurance company, the borrower was required to take out a policy of insurance upon the life of his grandson, payable to the grandson's estate, thereby imposing additional burdens upon the loan, the contract was usurious. Union Cent. Life Ins. Co. v. Hilliard, 16 Ohio Cir. Ct. Repts. 434, 8 O. C. D. 437. Defendant, in a written application for a loan, to bear 8 per cent. interest, appointed plaintiff his agent to procure same. Plaintiff exacted a commission of 10 per cent. upon the amount borrowed, which was secured by a note and second mortgage. Held that, in the absence of a showing that plaintiff was the agent of the lender, or that the lender was interested in or received a part of the commission, the commission was not within Rev. St. ch. 10, tit. 7, forbidding usury. Cornwell v. McCoy (Idaho), 55 Pac. Rep. 240. Where a broker, acting as an agent in loaning money, charges a borrower by the terms of the mortgage, more than one-half of 1 per cent. for obtaining the loan and for extending it from time to time, in violation of Gen. St. p. 3703, sec. 5, the loan is usurious. Hughson v. Newark Mortgage Loan Co. (N. Y.), 41 Atl. Rep. 492. The defense of usury is not established where it is not shown that the payee authorized, or knew or was affected with notice, that his agent, in negotiating the loan, exacted a commission on which the usury was predicated, or received any portion of the sum. Friedman v. Bruner, 54 N. Y. S. 997, 25 Misc. Rep. 474.

JETSAM AND FLOTSAM.

POWER OF EQUITY TO PROTECT POLITICAL RIGHT.

The commonly asserted theory that equity has no power to protect any rights except rights of property was discussed at some length in the December, 1897, number of *Case and Comment*, in which the conclusion was drawn that, if the rule could be said to be established, it had many exceptions. One phase of the question is presented by the cases respecting the power of equity to protect political rights. A recent decision in the superior court of Cincinnati, in *Re* Contempt Proceedings against Grear, 6 Ohio Nisi Prius Reports, 312, denies an injunction to prevent the use of certain ballots in a prospective primary election on the ground that they were unlawfully marked by a certain device. The opinion by Jackson, J., elaborately discusses the question and reviews other authorities. It seems to accord with the weight of the authorities, though the cases are in some conflict. In State *ex rel.* Adams County v. Cunningham (Wis.), 15 L. R. A. 561, the jurisdiction to grant an injunction against giving notice of election under an unconstitutional statute was upheld, but the discussion was not directed to the power of a court of equity

in such cases so much as it was to the question of the jurisdiction of the supreme court under a constitutional provision authorizing it to issue certain writs, including that of injunction, and to hear and determine the same. In State *ex rel.* Lamb v. Cunningham (Wis.), 17 L. R. A. 145, the above case was followed, but here again the question of the power of equity was assumed rather than decided. In Denny v. State *ex rel.* Basler (Ind.), 31 L. R. A. 726, the jurisdiction to grant an injunction in a similar case was again assumed without discussion. On the other hand, in Fletcher v. Tuttle, 151 Ill. 41, 25 L. R. A. 143, it was expressly decided that chancery has no jurisdiction to protect purely political rights, such as those in respect to public elections. The court declared that State v. Cunningham, *supra*, was decided under a different judicial system, and that in Wisconsin the power of the supreme court to issue an injunction did not seem to be limited to purely equitable cases, but seemed to extend to all cases affecting the sovereignty of the State, its franchise or prerogatives, or the liberties of the people. The court said the doctrine is clearly established that equity will not interfere to determine questions concerning the appointment or election of public officers or their title to office, as such questions are of a purely legal nature and cognizable only by courts of law. In the more recent case of Kearns v. Hawley (Pa.), 42 L. R. A. 235, an injunction against adding names to a political committee or striking names therefrom was refused where the committee did not own or pretend to own or derive any benefit from anything of value held by them in common, although the members of the committee were elected at primary elections and the law recognized political parties so far as to prescribe the duties of officers at such primaries. But in this case the decision was not based so much on the theory that the rights were political as that they were the rights of members of a voluntary and unincorporated association, with which the courts would not interfere, and the court said: "It may be, if this bill had aimed to prevent a threatened violation of law by any of these officers, it could have been maintained."

BOOK REVIEWS.

LAW AND PRACTICE IN ACCIDENT CASES,

With Pleadings and Forms; Common Law and Codes; Evidence and Proof; Damages for Personal Injuries and for Causing Death; Questions of Law and Fact; Defenses; Contributory Negligence; Fellow-Servants; Requests to Charge and Charges by Trial Judges. By Charles C. Black. This is a practice book in distinction from standard works on the law of negligence. An excellent book for ready reference and use in the trial of cases. It will render assistance in bringing, maintaining and defending accident cases in the courts. In the first two chapters are stated the general principles underlying the law of negligence with citations of the leading cases of the standard works on the subject of negligence. About 5,000 cases are cited, being, the author says, the important cases. About 100 pages of the book are taken up with Forms, Common Law and Code. Some charges in full by trial judges are given for the purpose of showing the precise application made by the courts of the principles of negligence to the trial of accident cases. The author says that in no other branch of the law is it so literally true as in the law of negligence, that it is one thing to understand a principle of law and quite a different matter to define it accurately and apply it correctly. The book contains about 850 pages well bound in law sheep and printed on excellent paper. Published by Soney & Sage, Newark, N. J.

BOOKS RECEIVED.

Legalized Wrong. A Comment on the Tragedy of Jesus. By Robert Clowry Chapman, of the Chicago Bar. Fleming H. Revell Company, Chicago, New York, Toronto, 1899. Review will follow.

American Bankruptcy Reports, Annotated, Reporting the Bankruptcy Decisions and Opinions in the United States, of the Federal Courts, State Courts and Referees in Bankruptcy. Edited by Wm. Miller Collier, Author of "Collier on Bankruptcy," Assisted by Mark L. Whitney, of the Auburn, N. Y. Bar. Vol. II. Albany, N. Y., Matthew Bender, 1900. Sheep, pp. 881. Price, $5.00. Review will follow.

The American State Reports Containing the Cases of General Value and Authority Subsequent to Those Contained in the "American Decisions" and the "American Reports," Decided in the Courts of Last Resort of the Several States. Selected, Reported and Annotated, by A. C. Freeman, and the Associate Editors of the "American Decisions." Vol. LXX. San Francisco: Bancroft-Whitney Company, Law Publishers and Law Booksellers, 1900. Review will follow.

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Important Decisions and except those Opinions in which no Important Legal Principles are Discussed of Interest to the Profession at Large.

1. ADMIRALTY JURISDICTION—Maritime Contracts.—A contract by which respondent, as a ship broker, agreed to collect certain freights earned by a vessel, and to divide the same with libelant, in consideration that the latter would not contest a claim filed by respondent against the vessel in pending proceedings in which she was libeled, is not maritime, and a suit for its enforcement cannot be maintained in a court of admiralty.—SKINNER v. HARRIS, U. S. D. C., E. D. (N. Car.), 98 Fed. Rep. 442.

2. APPEAL—Res Judicata.—When a case has been decided by this court, and afterwards comes here again by appeal or petition in error, the points of law already adjudicated become the law of the case.—ATCHISON, T. & S. F. R. Co. v. MCFARLAND, Kan., 59 Pac. Rep. 665.

3. APPLICATION OF PAYMENTS—Interest.—The holder of five notes given for the purchase of land, all dated the same day, and payable as annual installments, bearing interest from their date, and it being stated in the notes, "said interest to be paid annually," receiving partial payment thereon, without any directions from the debtor as to the application of such payments, may apply the same, first, to the payment of the interest on any or all of such notes which may be due at the time of the payment, and then to the principal of such of the notes as may be due.—BOGGESS v. GOFF, W. Va., 34 S. E. Rep. 741.

4. ASSIGNMENT FOR BENEFIT OF CREDITORS—Schedule.—The making of an assignment by an insolvent debtor, and the filing of the schedule of liabilities by the assignor, are separate acts, and the failure of the assignor to file a verified schedule of liabilities within the time prescribed by statute will not render an assignment already made inoperative and void.—BLAIR v. ANDERSON, Kan., 59 Pac. Rep. 644.

5. ASSOCIATIONS—Election of President.—Where the president and a minority of the members of an association, which has not adopted rules for its government, withdrew at a regular meeting, on differing with the majority as to incorporation, and the majority duly adjourned to a subsequent date, when they removed the president and elected another in her place, without notice to her, the member elected was entitled to sue, as president, to recover property belonging to all the members, the same as "all the associates" could have sued "by reason of their interest or ownership therein," as authorized by Code Civ. Proc. § 1919.—OSTROM v. GREENE, N. Y., 55 N. E. Rep. 919.

6. ATTACHMENT—Non-Resident.—A party, residing in the State of West Virginia, who enters the volunteers service of the United States, and with his regiment goes beyond the limits of the State, and remains for some time in such service, does not thereby become a non-resident of the State, within the meaning of the attachment law; and, that being the only ground of attachment against him, a valid attachment cannot on that ground be sued out against his property.—LYON v. VANCE, W. Va., 34 S. E. Rep. 761.

7. BANKRUPTCY—Assets—Liquor License.—Where the laws of the State permit the transfer of a license for the sale of intoxicating liquor, subject to the approval of the buyer by the licensing authority, and such licenses have an actual money value for the purpose of sale and transfer, the right to sell a license of this kind will vest in the trustee in bankruptcy of the licensee, for the benefit of the estate, and the bankrupt will be required to execute the instruments necessary to effectuate the sale.—IN RE BECKER, U. S. D. C., E. D. (Penn.), 98 Fed. Rep. 407.

8. BANKRUPTCY—Conclusiveness of Adjudication.—Where the respondent, in a petition in involuntary bankruptcy, denies his alleged indebtedness to the petitioning creditor, and takes issue on the validity and the consideration of the note set forth in the petition and on which such creditor claims, and, upon evidence offered on both sides, the court finds the allegations of the petition to be true, and makes an adjudication of bankruptcy, such adjudication is conclusive evidence of the validity of the petitioner's claim when the note is presented for allowance as a claim against the bankrupt's estate, and it cannot be disputed either by the bankrupt or by any creditor who joined in the proceedings and opposed the adjudication.—IN RE HENRY ULFELDER CLOTHING CO., U. S. D. C., N. D. (Cal.), 98 Fed. Rep. 409.

9. BANKRUPTCY—Dissolution of Liens.—Bankr. Act 1898, § 67f, providing that liens obtained through legal proceedings against an insolvent debtor "at any time within four months prior to the filing of a petition in bankruptcy against him, shall be deemed null and void in case he is adjudged a bankrupt," is to be interpreted as applying to voluntary as well as involuntary cases, such a construction being in accordance with the general purpose and policy of the act; and especially in view of the fact that section 1, cl. 1, declares that "'a person against whom a petition has been filed' shall include a person who has filed a voluntary petition."—IN RE RHOADS, U. S. D. C., W. D. (Penn.), 98 Fed. Rep. 399.

10. BANKRUPTCY—Examination of Witnesses.—The provisions of the bankruptcy act authorizing the examination of third persons as witnesses in bankruptcy proceedings, and requiring them to produce books and documents when called for, are intended to enable creditors to find grounds of opposition to the bankrupt's discharge, if any exist, and to enable the trustee to discover assets of the estate which may be applied to the payment of the bankrupt's debts.—IN RE HORGAN, U. S. C. C. of App., Second Circuit, 98 Fed. Rep. 414.

11. BANKRUPTCY—Preferences—Pledge of Personalty.—An agreement to pledge personal property as security for a debt is not executed where the goods are not delivered to the creditor, nor set apart and treated as his property; and, where the creditor takes possession of the property a few days before the filing of a petition in bankruptcy against the debtor, the transaction is voidable as a preference, notwithstanding that the original agreement was made more than four months before that time.—IN RE SHERIDAN, U. S. D. C., E. D. (Penn.), 98 Fed. Rep. 406.

12. BANKRUPTCY — Verification of Petition before Bankrupt's Attorney.—An adjudication in voluntary bankruptcy will not be set aside on the ground that the notary public who took the verification of the petition and schedule was the bankrupt's own attorney, when it is not shown that he was attorney of record for the bankrupt in any litigation then pending in the court, although he subsequently appeared as attorney of record for the bankrupt in the bankruptcy proceedings.—IN RE KINDT, U. S. D. C., S. D. (Iowa), 98 Fed. Rep. 403.

13. BANKS AND BANKING—Checks—Presentation.—A check which, after passing through the hands of several holders, was placed in a bank for collection two days after its date, and by such bank, on the same day, forwarded to the drawee for payment, who received it the day following, was presented for payment in due time to bind indorsers.—HOUGH v. GEAREN, Iowa, 81 N. W. Rep. 463.

14. BENEFICIAL ASSOCIATIONS—Beneficiaries' Rights.—While a beneficial association organized under an act authorizing it to pay benefits to certain relatives of deceased members may contract the classes of persons authorized to receive benefits within narrower limits than those prescribed by the statute, it cannot extend them.—TEPPER v. SUPREME COUNCIL OF ROYAL ARCANUM, N. J., 45 Atl. Rep. 111.

15. BOUNDARIES — Action to Establish.—A survey made for the purpose of establishing lost corners on a standard parallel or correction line may be rejected in part because made under a mistake of fact as to the existence and location of a certain corner section, and yet be adopted by the court in so far as it was not controlled by such mistake.—FERCH v. KONNE, Minn., 81 N. W. Rep. 524.

16. BUILDING AND LOAN ASSOCIATIONS — By-Laws—Usury.—A borrowing member of a building and loan association, who did not deny the existence of certain by-laws as alleged in a petition in a suit against him to foreclose a mortgage, but merely alleged that they were void because not adopted by persons having authority, etc., could not be heard to question their existence, in the absence of any proof to sustain his allegations.—BUILDING, SAVINGS & LOAN ASSN. OF HAWARDEN V. FROELICH, Iowa, 81 N. W. Rep. 449.

17. BUILDING AND LOAN ASSOCIATIONS—Obligations of Borrower.—A borrowing member of a building association, which is a going concern, on being sued by it is only chargeable with his loan, legal interest, and reasonable fines, and should be credited with all payments, whether made as dues, premiums or interest.—DOWELL V. SAFETY BUILDING & LOAN CO., Ky., 54 S. W. Rep. 845.

18. CARRIERS — Passenger — Negligence. — Where a passenger shows that he was injured in a collision of trains moving in opposite directions, his *prima facie* right to recover is established, and, such a collision being shown, with nothing in the pleadings or proof to exonerate the carrier, it was not error to instruct that "defendant admits its liability if plaintiff received any personal injury by reason of, and at the time of, the collision."—BALTIMORE & O. S. W. RY. CO. V. HAUFMAN, Ky., 54 S. W. Rep. 841.

19. CARRIERS—Passenger—Sleeping Car Companies. —A sleeping car company is liable to a passenger for the loss of rings stolen from her figures while she slept, where reasonable care was not used to prevent thefts.—PULLMAN PALACE CAR CO. V. HUNTER, Ky., 54 S. W. Rep. 845.

20. CHATTEL MORTGAGE— Mortgagor's Possession—Sale of Goods.—An agreement in a chattel mortgage that the mortgagor shall continue in possession, and sell the property in the usual course of business, and apply the net proceeds in discharge of the mortgage debt, does not create a trust in favor of the mortgagor, rendering such mortgage void as to creditors, since, if the mortgagor fails to so apply the proceeds, they will be so applied by the court, in order to protect other creditors.—STOUT V. PRICE, Ind., 55 N. E. Rep. 964.

21. CHATTEL MOTRGAGE — Validity—Lien.—A chattel mortgage may, under the statute of this State, be embodied in a contract of lease. The lien created thereby is not invalidated by the failure of the register of deeds to make correct entries thereof if the instrument itself is filed with and left in the custody of the register.—T. B. TOWNSEND BRICK & CONTRACTING CO. V. ALLEN, Kan., 59 Pac. Rep. 683.

22. CLERK OF COURT—Negligence.—In an action against a clerk of a district court for damages by reason of his negligently failing to enter a transcript of judgment upon the judgment docket, or upon the index to the appearance docket, the plaintiff must allege and prove that he sustained damage by reason of such negligence.—SIMNS V. CUTTER, Kan., 59 Pac. Rep. 671.

23. CONSTITUTIONAL LAW — Regulation of Commerce. —Hill's Ann. Laws, § 1952, forbidding any person to pursuade a seaman to desert a vessel within waters under the jurisdiction of the State, is a valid exercise of police power, and is not in conflict with Const. U. S. art. 1, § 8, subd. 3, granting congress power to regulate foreign and interstate commerce, since a State act regulating commerce is not void unless contravening an existing act of congress or the policy of the government.—YOUNG V. FRAZIER, Oreg., 59 Pac. Rep. 707.

24. CONTRACT — Cancellation — Fraud.—Where a plaintiff in his bill alleges that he was induced to sign a contract while in a state of intoxication to such a degree as not to know the true intent or meaning of the same, such contract is not only voidable, but absolutely void, on demurrer.—HUNTER V. TOLBARD, W. Va., 34 S. E. Rep. 737.

25. CONTRACTS—Performance—Time.—Where, before the time within which a boat was required to be completed had expired, the contractor became insolvent and made a general assignment for the benefit of its creditors, whereupon the purchaser took possession of the boat when nearly two months of the time within which it might have been completed remained, such act operated to prevent the contractor from completing the contract, and hence relieved it from liability for damages imposed thereby for failure to complete the boat within the time.—VANDEGRIFT V. COWLES ENGINEERING CO., N. Y., 55 N. E. Rep. 941.

26. CONVERSION — Attached Property.—Since an officer removing property from defendant's possession, and placing a keeper over it, is liable for conversion of the same on dissolution of the attachment, if he fails to deliver it to defendant on a demand, a charge that an officer in such case was only bound on dissolution to remove his keeper, and leave the goods where he found them, was properly refused.—MUNRO V. STOWE, Mass., 55 N. E. Rep. 992.

27. CRIMINAL EVIDENCE—Dying Declarations.—Where one taking decedent's statement previous to her death testified that the part reciting that she made the same knowing that she was about to die was not her language; but that before she signed the statement he read it over to her without interruption, and she declared it to be correct, and her attending physician, present at the time the statement was taken, testified that he could not positively state that decedent appreciated that she was in a dying condition, and she made no preparation for death, and said and did nothing showing that she believed she was about to die, though conscious and able to communicate with those about her, such statement was inadmissible as a dying declaration.—PEOPLE V. FUHRIG, Cal., 59 Pac. Rep. 993.

28. CRIMINAL LAW — Constitutional Right to Trial by Jury.—The trial by jury, the right to which is secured to the accused in all criminal prosecutions by the sixth amendment to the constitution, is a trial according to the course of the common law, as it existed at the time such amendment was adopted, and by that law the court might proceed to judgment upon a plea of guilty, and a trial by jury was necessary only in cases where the accused, by plea of not guilty, had made an issue to be tried; hence a judgment of conviction rendered on a plea of guilty, voluntarily entered, and which leaves no issue of fact for trial, is not in violation of the constitutional rights of the defendant.—WEST V. GAMMON, U. S. C. C. of App., Sixth Circuit, 98 Fed. Rep. 426.

29. CRIMINAL LAW—Habitual Criminals.—St. 1887, ch. 495, § 1, punishing, on third conviction as an habitual criminal, one who has been twice convicted, sentenced, and committed for terms of less than three years each, is not restricted to cases where there was an interval of liberty between the first and second terms.—COMMONWEALTH V. RICHARDSON, Mass., 55 N. E. Rep. 988.

30. CRIMINAL LAW—Instructions.—Instructions given by the trial court, on its motion, in a felony case, which may convey to the jury the opinion of the court as to the guilt of the accused, are improper.—STATE V. KERNS, W. Va., 34 S. E. Rep. 734.

31. CRIMINAL LAW — Lotteries — Indictment.—Under Ky. St. § 2577, providing that an indictment may charge in one count the commission of any number of the offenses mentioned in Ky. St. § 2573, which declares it a felony to set up, operate, promote, or aid a lottery, proof of aiding, assisting, or abetting in setting up a lottery was admissible under a count of an indictment which charged defendant with setting up, operating, and promoting a lottery; and therefore it was not prejudicial error to sustain a demurrer to an additional count, charging defendant with aiding, assisting, and abetting in setting up and promoting a lottery.—COMMONWEALTH V. ROSE, Ky., 54 S. W. Rep. 862.

32. CRIMINAL LAW—Plea—Former Jeopardy.—A defendant in a criminal case cannot be said to be in "jeopardy," so as to entitle him to plead a former ac-

quittal or conviction to a subsequent trial for the same offense, unless he has been arraigned, or waived arraignment, and pleaded not guilty, or had such plea entered for him; and therefore, when a trial has been had without an arraignment of the accused or a waiver of it by him, and without a plea of not guilty or the entry of it for him, he cannot be said to have been in "jeopardy."—STATE v. ROOK, Kan., 59 Pac. Rep. 653.

33. CRIMINAL LAW—Plea of Former Acquittal.—A plea that defendant "has been acquitted of the offense charged in the indictment by the judgment of this court" rendered on a date named, is a sufficient plea of former acquittal.—COMMONWEALTH v. ROSE, Ky., 34 S. W. Rep. 863.

34. DEATH — Recovery for Death of Minor Child.—In order for a parent to recover for the death of his minor son, a resident of the State, he must, under Civ. Code, §§ 422, 422a, giving the right of action in such case to the next of kin when no personal representative has been appointed, allege and prove that there has been no such appointment.—ATCHISON WATER CO. v. PRICE, Kan., 59 Pac. Rep. 677.

35. DEDICATION—Acceptance.—There is a dedication to public use of a narrow strip of land along a river, where the owner of land including such strip makes a plan of lots thereof, showing that such strip is intentionally left, though not designating the purpose for which it is left, and lots are sold according to the plat. —CITY OF PITTSBURGH v. EPPING-CARPENTER CO., enn., 45 Atl. Rep. 129.

36. DEDICATION — Acceptance—Revocation.—To constitute a dedication of land for highway purposes, there must be an offer of the land by the owner, and an acceptance thereof by the public or by the proper local authorities.—LIGHTCAP v. HELD, Ind., 55 N. E. Rep. 952.

37. EQUITY—Jurisdiction.—Equity has no jurisdiction where there is full, complete, and adequate remedy by action at law.—COOMBS v. SHISLER, W. Va., 34 S. E. Rep. 768.

38. EVIDENCE—Expert Evidence—Hypothetical Questions.—Medical experts, in response to hypothetical questions, are not required to answer with certainty, but may give their opinions as to the probable result of a given treatment or operation.—ROARK v. GREENO, Kan., 59 Pac. Rep. 655.

39. EXECUTION—Indorsement—Waiver of Exemption. —Under Code, § 2107, providing, in case claim of waiver of homestead or other exemption is sustained, for the indorsement of the fact of waiver on the execution, such indorsement is a command to the officer to disregard any claim of defendant in contravention thereof, and he is justified in obeying it, as in case of other mandates which he is legally bound to execute, and this whether the pleadings averred or the judgment entry disclosed a waiver or not.—WARD v. DEADMAN, Ala., 26 South. Rep. 916.

40. EXECUTION—Sale of Realty—Redemption.—Under section 2 of chapter 109, Laws 1893, where the court finds, upon the confirmation of the sale of real estate, that the property has been abandoned, or is not occupied in good faith, it has authority to limit the time in which redemption may be made to nine months; and the certificate of sale and deed made in pursuance of the order of the court in such case is not void, however erroneous.—ALLEN v. LEU, Kan., 59 Pac. Rep. 680.

41. EXECUTION SALE—Death of Judgment Debtor.— A sale of real estate made under a special execution issued after the death of the plaintiff in the decree, without a revivor of the judgment, is void.—SEELEY v. JOHNSON, Kan., 59 Pac. Rep. 631.

42. FEDERAL COURTS—Jurisdiction.—A bill by which complainant asserts his right to the flow of the waters of a river to his lands, and seeks to restrain their diversion, is not multifarious because a number of persons are joined as defendants, and alleged to have separately diverted water from the river. In such a suit it need not appear, to give a federal court jurisdiction, that the amount involved as to each defendant exceeds the jurisdictional amount, the matter in controversy being the injury to complainant's property, to which, it is alleged, all of the defendants contribute, and for which they are chargable jointly.—PACIFIC LIVE STOCK CO. v. HANLEY, U. S. C. C., D. (Oreg.), 98 Fed. Rep. 327.

43. FEDERAL COURTS—Amount in Controversy.—The amount in controversy for jurisdictional purposes is the sum claimed by plaintiff in his complaint if good faith, where he is entitled to recover such sum, provided the evidence sustains his allegations, and the court is not deprived of jurisdiction because his own evidence may not entitle him to recover the jurisdictional amount, where it is not of a character to impeach the good faith of his claim.—UNG LUNG CHUNG v. HOLMES, U. S. C. C., D. (Oreg.), 98 Fed. Rep. 328.

44. FRAUDS, STATUTE OF—Contracts to Sell Land.—An agreement, resting wholly in parol, whereby one promises to sell to another an interest in land upon tender within a given time of a specified amount, is within the statute of frauds.—LYONS v. BASS, Ga., 34 S. E. Rep. 721.

45. FRAUDS, STATUTE OF—Parol Gift of Land.—Satisfactory proof that a father donated in parol a tract of land to his son when he became of age, as he had done with the other children; that the son accepted the gift and took and held possession of the land for years; that he made lasting and expensive improvements thereon, and otherwise changed his condition on the faith of the gift—is sufficient to take the case out of the operation of the statute of frauds, and to warrant a judgment giving to the son complete title to the land. —SCHWINDT v. SCHWINDT, Kan., 59 Pac. Rep. 647.

46. FRAUDS, STATUTE OF—Possession of Personalty.— A milliner, having left her store in possession of her landlord, without resuming possession sold the stock to a creditor in part payment of her debt. Held, in an action by the purchaser against an attaching creditor of the seller, that at the time of the sale she was not in possession, within Code 1873, § 1923, invalidating a sale of personalty where the vendor retains possession, as against creditors, unless the conveyance is in writing, duly recorded, etc.—FRANK v. LEVI, Iowa, 81 N. W. Rep. 459.

47. FRAUDULENT CONVEYANCES—Notice to Grantee.— If the circumstances involved in the making a fraudulent transfer of property are sufficient to put a man of ordinary prudence and experience in business transactions on inquiry, he must be held, though a purchaser for value, to have notice of the fraudulent intent of his vendor to delay, hinder and defraud his creditors.—KENEWEG v. SCHILANSKY, W. Va., 34 S. E. Rep. 773.

48. FRAUDULENT CONVEYANCES — Sale of Mercantile Stock.—A mercantile firm, although indebted to insolvency, may sell its stock of merchandise to a disinterested party and receive his notes in payment therefor, payable to its order, and assign one or more of said notes in payment of a debt owed by it to a *bona fide* creditor, and such transfer will not be void under § 2 of ch. 74 of the Code, as amended by ch. 4 of the Acts of 1895.—MERCHANT & CO. v. WHITESCARVER, W. Va., 34 S. E. Rep. 814.

49. GUARANTY—Consideration.—It is not necessary in this State that a written contract of guaranty to pay the debt of another should contain a statement of the consideration therefor.—STERN v. DEUTSCH, Kan., 59 Pac. Rep. 687.

50. HOMESTEAD—Husband and Wife.—Where a husband buys property, takes title in the name of his wife, and after her death occupies it as a homestead for nine years, and until his death, in the absence of proof overcoming the presumption that the conveyance was in the nature of a provision for the wife, the title will pass to the wife's heirs, his occupancy being an election to hold it as a homestead for life.—MCGUIRE v. MCGUIRE, Iowa, 81 N. W. Rep. 451.

51. INFANTS — Executory Contract — Enforcement.—The contract of an infant is simply voidable, and in law there is a marked distinction between his executed contract and his contract merely executory. As to the latter he may always interpose his infancy as a defense in an action for its enforcement, and he is not bound by such a contract unless he has affirmed or ratified it, after he has arrived at maturity, by some sufficient act or deed.—NICHOLS & SHEPARD CO. v. SNYDER, Minn., 81 N. W. Rep. 516.

52. INJUNCTION—Irreparable Injury.—The unlawful extraction of oil or gas from land, they being part of the land, is an act of irreparable injury, and equity will enjoin it.—MOORE v. JENNINGS, W. Va., 34 S. E. Rep. 793.

53. INSURANCE — Application — Waiver.—Any untrue statement in an application for insurance, when made a part of the policy, and by the insured warranted to be true, avoids the policy of insurance, regardless of the question of its materiality, yet the insurance company may, by its conduct, waive its right to insist upon such forfeiture. The acceptance and retention of money in payment of premiums after the insurance company has knowledge of all the facts constitute such waiver.—JOHNSON v. MASSACHUSETTS BENEFIT ASSN., Kan., 59 Pac. Rep. 669.

54. INSURANCE—Knowledge of Agent Taking Application.—Though an agent had no authority to appoint a subagent, yet where he issued a policy on an application taken by one whom he had employed to solicit insurance, the knowledge of that person as to the title and value of the insured property was the knowledge of the company.—TEUTONIA INS. CO. v. HOWELL, Ky., 54 S. W. Rep. 852.

55. INSURANCE—Provision for Appraisement of Loss.—Under an insurance policy providing that in case of loss, and a disagreement as to the amount thereof, each party shall appoint an appraiser, and the two shall select an umpire and appraise the loss, and that no action shall be maintained on the policy until after the insured shall have fully complied with such provision, the insured discharges his obligation in that regard when he appoints an appraiser in good faith, and where the appraisement fails through without his fault, he is not required to propose the selection of other appraisers, but may resort to the courts to have his damages assessed.—WESTERN ASSUR. CO. OF TORONTO, CANADA, v. DECKER, U. S. C. C. of App., Eighth Circuit, 98 Fed. Rep. 381.

56. JUDGMENT—Corporations—Process.—Where process designating defendant as a corporation was served on one of its officers, the fact that the petition designated it as a co-partnership did not invalidate a default judgment rendered against it, since the notice conferred jurisdiction of defendant as a corporation, and, by failing to appear or assail the pleadings, it waived any error therein.—CHAS. C. TAFT CO. v. BOUNANI, Iowa, 81 N. W. Rep. 469.

57. JUDGMENT — Restraining Enforcement.—Where a party has been summoned to answer an action at law for the recovery of money, and allows judgment by default to go against him, although at the time of such recovery he had judgments against the plaintiff which he might have pleaded as a set-off, he cannot, on the ground that he mistook the time at which the case was to be tried, combined with the fact of the insolvency of the plaintiff, come into equity to obtain the benefit of such set-off.—ZINN v. DAWSON, W. Va., 34 S. E. Rep. 784.

58. JUDGMENT — Set-Off.—The owner of property assigned to a mortgagee thereof a cause of action against defendant for the conversion thereof, and the mortgagee procured judgment against defendant in the owner's name. Held, since the right of a judgment debtor to apply by set-off a judgment in his favor and against his judgment creditor to the discharge of a judgment against him is within the discretion of the court, the defendant will not be permitted to set-off against the judgment in the action assigned to the mortgagee judgments arising out of transactions other than the one in which plaintiff's judgment was entered, though the judgment debtor's judgments were procured prior to the entry of the judgments against him, and the judgment creditor is insolvent.—GAUCHE v. MILBRATH, Wis., 81 N. W. Rep. 487.

59. JUDGMENT AGAINST DECEDENT—Impeachment.—A judgment for money, and for the foreclosure of a mortgage upon real estate, against a deceased defendant, who had theretofore been duly served with process, is void, although the fact of death does not appear of record; and it may be collaterally impeached because thereof by the heirs of the deceased, if not made parties to the foreclosure proceedings, in an action brought by them for the recovery of the land sold and conveyed in satisfaction of the judgment.—KAGER v. VICKERY, Kan., 59 Pac. Rep. 628.

60. LANDLORD AND TENANT — Landlord's Title.—A lease of ground abutting on a street fixed the rental for the first 15 years of the term and stipulated that upon the termination of that period arbitrators should determine what would be a "reasonable yearly rent" for future periods. When they met to determine the rent, an elevated road had been erected in the street, which seriously interfered with the tenant's light, air, and access. Held, that the lessor could recover damages for appropriating such easements, because of the presumption that the arbitrators' appraisal of the rent to be paid was based upon the reduced value of the property due to the erection of the road.—KENNOCHAN v. MANHATTAN RY. CO., N. Y., 55 N. E. Rep. 906.

61. LANDLORD AND TENANT—Oil Lease.—A bill by a lessor of land against the original lessee and his successive assignees, being as to the present holder nothing more than an ejectment bill for breach of covenant, and as to the other defendants a personal action for damages, is demurrable for multifariousness.—YOUNG v. FOREST OIL CO., Penn., 45 Atl. Rep. 121.

62. LIBEL—Special Damage—Pleading.—Letters written by an attorney at law, in whose hands claims against a merchant had been placed for collection, to the creditor and to a collection agency, in which letters the attorney stated, in effect, that the merchant debtor had failed and refused to pay his debts, when in truth and in fact the merchant had paid to the attorney the debts referred to, were libelous; and an action could be maintained thereon without an allegation of special damage.—BROWN v. HOLTON, Ga., 34 S. E. Rep. 717.

63. LIEN — Laborers' and Mechanics' Liens.—Under Acts 23d Gen. Assem. ch. 48, providing that, when the property of any firm or corporation shall be seized under process or put in the hands of a receiver, debts owing to laborers "shall be considered and treated as preferred, and shall be paid first," labor claimants, who have performed labor for a corporation whose property has been transferred to a receiver, are entitled to a preference over the holders of mechanics' liens filed against the same property before the corporation acquired it.—HAW v. BURCH, Iowa, 81 N. W. Rep. 460.

64. LIMITATIONS — Amendment — Mistake.—Suit on monthly installments, due under a contract, was limited between the fourth and twelfth months after expiration of each fiscal year. Plaintiff sued within the time limited, but by mistake alleged non-payment of installments which were paid, and, even if not paid, the suit as to these installments was premature. Held that, under Code, § 3600, authorizing amendments to correct mistakes, plaintiff could amend by substituting the true dates of the unpaid installments, though at time of amendment a new suit thereon would be barred.—TAYLOR v. TAYLOR, Iowa, 81 N. W. Rep. 472.

65. LIMITATIONS — Amendment of Pleading.—Where an action is brought in Kansas, based upon a particular section of the Missouri statute, and afterwards an amended petition is filed, alleging a right of action un-

der another section of the same statute, and the time in which the plaintiff had a right to bring said action expired before the amended petition was filed, held that said second action is not saved by the filing of the original petition in time.—WALKER v. HESTER, Kan., 39 Pac. Rep. 662.

66. MARINE INSURANCE — Insurance on Profits of Cargo—Total Loss.—A recovery of insurance on profits of a cargo under a policy insuring against total loss only, and valuing the profits at the sum insured, will not be prevented, where the cargo was abandoned as a total loss, by the fact that other insurers of the cargo subsequently saved a portion of it and then delivered it to the former owners in part payment, on a settlement of their liability for the total loss of the cargo.—CANADA SUGAR REFINING CO. v. INSURANCE CO. OF NORTH AMERICA, U. S. S. C., 20 Sup. Ct. Rep. 239.

67. MASTER AND SERVANT — Fellow-Servant.—A foreman was directing plaintiff, an employee, in the moving of a column, and told plaintiff to let go of it, and do something else, himself taking plaintiff's place. As plaintiff turned to leave, the column rolled, and struck him. Held that, as to the particular act causing plaintiff's injury, the foreman was a fellow-servant, and hence plaintiff could not recover from the master for the foreman's negligence.—BARNICLE v. CONNOR, Iowa, 81 N. W. Rep. 452.

68. MASTER AND SERVANT—Negligence — Assumption of Risk.—Plaintiff, while coming from the hold of defendant's vessel, was injured by a fall resulting from his taking hold of an unfinished sheep trough placed by defendant's workmen near the hatch, and trusting his weight on it. It was not placed there for such use as plaintiff made of it, and plaintiff knew of the building of the pens in the vessel, and that the work was unfinished. Held, that he relied upon the trough at his own risk, and hence the direction of a verdict for defendant was proper.—GIBSON v. BRITISH & N. A. STEAM-NAV. CO., Mass., 55 N. E. Rep. 987.

69. MASTER AND SERVANT—Railroads—Venue.—Under the statute authorizing the bringing of an action against a railroad company for an injury to person or property in any county through which the road passes, a resident of Arkansas may sue in any county in Arkansas through which the road passes for personal injuries received thereon in another State.—ST. LOUIS, ETC. RY. CO. v. BROWN, Ark., 54 S. W. Rep. 865.

70. MECHANICS' LIENS—Subcontractors — Change of Statute.—The amendment of March 21, 1896, to the mechanic's lien law, whereby the time within which a subcontractor must file his claim in order to preserve his lien was extended from 60 days to 6 months, applies where the amendment was in effect when the subcontractor ceased to furnish materials, though it was not in effect when the contract was made; it being competent for the legislature to extend the time for filing claim after the contract is made.—FOX v. SOMERSET ODD FELLOWS HALL & AUDITORIUM CO., Ky., 54 S. W. Rep. 835.

71. MORTGAGE—Equitable Mortgage—Conveyance of Title.—An instrument in form an absolute conveyance of real estate, given to secure the payment of a debt, is no more than an equitable mortgage, and nothing short of a new agreement can convert it into a deed or transfer of title.—LE COMTE v. PENNOCK, Kan., 39 Pac. Rep. 641.

72. MORTGAGE—Foreclosure—Mistake.—A mistake in drafting a foreclosure judgment, whereby it fails to conform to the judgment pronounced, may be corrected on motion in the court where the mistake occurred, in the absence of equities rendering such correction unjust.—PACKARD v. KINZIE AVE. HEIGHTS CO., Wis., 81 N. W. Rep. 488.

73. MUNICIPAL BONDS—Authority to Issue.—A statute authorizing cities to refund their "outstanding indebtedness, evidenced by bonds and warrants thereof," gives a city no power to issue bonds for the purpose of paying bonds of a water company secured by mortgage on its property, which the city has since bought subject to the mortgage.—CITY OF SANTA CRUZ v. WAITE, U. S. C. C. of App., Ninth Circuit, 98 Fed. Rep. 887.

74. MUNICIPAL CORPORATIONS — Constitutional Indebtedness—Limit.—Const. art. 11, § 3, which prohibits a city from incurring an aggregate indebtedness exceeding 5 per cent. on the value of the taxable property within such city, "to be ascertained by the last State and county tax lists," does not limit the indebtedness of such city to 5 per cent. of the property subject to taxation for city purposes, where the State and county tax lists include all property in the corporate limits, whether taxable for city purposes or not.—WINDSOR v. CITY OF DES MOINES, Iowa, 81 N. W. Rep. 476.

75. MUNICIPAL CORPORATIONS—Contracts—Warrants.—Where municipal warrants were issued for ordinary, necessary, and current expenses, which, together with other like expenses, were within the limit of the current revenue and such special taxes as it might legally and in good faith have intended to levy therefor, the issuance of bonds for the funding thereof is not within Const. art. 11, § 3, which prohibits municipal corporations becoming indebted to an amount exceeding 5 per cent. of the value of the taxable property within such corporation, since such bonds would not increase the indebtedness of the city.—CITY OF CEDAR RAPIDS v. BECHTEL, Iowa, 81 N. W. Rep. 468.

76. MUNICIPAL CORPORATIONS—Dedication of Streets.—Where a part of the right of way of a railroad company was used by persons hauling freight to and from the company's cars, and both such part and another part of the right of way was used by the general public as a highway, there was no such exclusive or adverse use of the part used for freighting as would make it a highway by prescription.—BALTIMORE, ETC. RY. CO. v. CITY OF SEYMOUR, Ind., 55 N. E. Rep. 953.

77. MUNICIPAL CORPORATIONS — Expenditures.—The council of a city of the second class, having over 5,000 inhabitants, cannot lawfully incur expense, or enter into contract therefor, unless money has been previously appropriated for the purpose, or the expenditure has been previously sanctioned by a majority of the electors of the city.—CITY OF KEARNEY v. DOWNING, Neb., 81 N. W. Rep. 509.

78. MUNICIPAL CORPORATIONS—Sidewalks—Contributory Negligence.—Where plaintiff was injured by falling on a section of inclined sidewalk, there being no evidence that plaintiff regarded the walk as dangerous, whether he was guilty of negligence in venturing thereon after a light snowfall, when he could have avoided danger by going around, was properly submitted to the jury.—SYLVESTER v. TOWN OF CASEY, Iowa, 81 N. W. Rep. 455.

79. NATIONAL BANKS—Action to Enforce Assessments.—No limit of time having been prescribed by the federal statutes within which an action must be brought to enforce an assessment against a stockholder in an insolvent national bank, such an action is governed, as to limitation, by the statute of the State where it is brought, by virtue of Rev. St. U. S. § 711.—ALDRICH v. SKINNER, U. S. C. C., D. (Wash.), 98 Fed. Rep. 875.

80. NATIONAL BANKS—Actions to Enforce Assessment—Limitation.—Under the statute of limitations of Washington (2 Ballinger's Ann. Codes & St. §§ 4796-4805), an action against a stockholder of an insolvent national bank to recover an assessment must be brought within two years after such assessment has been made by the comptroller, and has become delinquent.—ALDRICH v. MCCLAINE, U. S. C. C., D (Wash.), 98 Fed. Rep. 878.

81. OFFICERS—Appointments— Injunction. — Injunction lies where an officer in the rightful possession of his office is interfered with in the discharge of his official duties, to the detriment of the public business.—POYNTZ v. SHACKELFORD, Ky., 54 S. W. Rep. 855.

82. PARENT AND CHILD—Adoption— Custody. — The fact that defendant and his wife had adopted plaintiff's

child, and cared for it as their own for two years, and were much attached to it, and it to them, and that they were of good moral character, suitable to have the custody of the child, and that it would be as well or better for the child to remain with them than to be returned to its mother, does not justify giving them custody of the child, when its mother and her husband are suitable persons, and able, to properly maintain and educate it.—STATE v. DEATON, Tex., 54 S. W. Rep. 901.

83. PARTITION—Property Subject.—Partition of oil and gas owned by co-owners separate from the surface cannot be decreed, except by sale and division of the proceeds. A judicial partition thereof by assignment of the oil and gas under sections of the surfaces is void.—HALL v. VERNON, W. Va., 34 S. E. Rep. 764.

84. PLEADING—Complaint.—A complaint should contain a succinct and definite statement of the facts relied on to constitute a cause of action, and they should be stated by direct averment, and not by way of recital, so that defendant may be apprised of the facts on which plaintiff relies.—SUTTON v. TODD, Ind., 55 N. E. Rep. 980.

85. POWERS—Execution—Separate Use.—T devised land to J, a married woman, "as her own separate estate," for life, with power to sell. She and her husband conveyed it in fee-simple, describing it, reciting the title of T, and adding, "of which he died seised, leaving by his last will to J." Held, that there was an execution of the power; the subject thereof being fully described, the will referred to, and the deed otherwise being inoperative, as the will created a separate use estate for J, which is not alienable by her, even with the joinder of her husband.—SCOTT v. BRYAN, Penn., 45 Atl. Rep. 135.

86. PRINCIPAL AND AGENT.—An agent for a non-resident, to make loans on mortgage security, to attend to all matters of security and collect interest and principal on loans made, and transmit them to his employer, cannot in his own name, or in the interest of his wife, undermine the security taken, by purchase of the mortgaged property at tax sale.—ABRAMS v. WINGO, Kan., 59 Pac. Rep. 661.

87. PROCESS—Service of—Return.—An officer's return on judicial process cannot be contradicted by the parties or their privies as to such facts stated in it as the law requires to be stated, unless the party collude with the officer to make a false return. This rule prevails in law and equity. As to notices for depositions, or other notices not judicial process, the return is only *prima facie* evidence of such fact.—MCCLUNG v. MCWHORTER, W. Va., 34 S. E. Rep. 740.

88. PROCESS—Summons.—A summons in which an erroneous return day is inserted is irregular, but not void.—LEY v. PILGER, Neb., 81 N. W. Rep. 507.

89. PROHIBITION—Board of Education.—To warrant a court in granting a writ of prohibition, it should clearly appear that the inferior tribunal is actually proceeding, or is about to proceed, in some matter over which it possesses no rightful jurisdiction.—HASSINGER v. HOLT, W. Va., 34 S. E. Rep. 728.

90. PUBLIC LANDS—Aliens—Right to Purchase.—Under Act 1891, § 1 (Laws 1891, p. 189), authorizing the board of school land commissioners to sell tide lands "to citizens of the State of Oregon," and section 2, requiring a purchaser to file with his application an affidavit that he is a citizen of the United States and of the State of Oregon, an unnaturalized alien who has declared his intention to become a citizen is not qualified to purchase lands under such act.—SPENCER v. CARLSON, Oreg., 59 Pac. Rep. 708.

91. RAILROAD COMPANY—Duty to Construct Depots.—Under Laws 1897, ch. 110, §§ 16, 18, providing that the railroad commissioners shall have the supervision of all railroads, and shall notify railroad companies whenever, in their judgment, "additions" to stations or station houses are expedient, they have authority to require a railroad to construct a suitable station house at a regular station used by it for the receipt and discharge of passengers and freight, where the only existing accommodation is a platform and side track, and there is a clear public necessity for such a building.—STATE v. CHICAGO, ST. P., M. & O. RY. CO., S. Dak., 81 N. W. Rep. 503.

92. RAILROAD COMPANY—Negligence—Public Crossings—Sounding Whistles.—An averment that a train was running at a high rate of speed without blowing the whistle or ringing the bell at a crossing, and that by reason of said negligence in failing to ring the bell or blow the whistle the injuries complained of were caused, states a cause of action against a railroad for failing in its statutory duty to sound the whistle or bell at short intervals when approaching a public crossing.—SOUTHERN RY. CO. v. POSEY, Ala., 26 South. Rep. 914.

93. RAILROAD COMPANY—Street Railroads—Contributory Negligence.—Plaintiff (8 years old), while attempting to cross a crowded city street diagonally, in front of a moving street car, was struck by it. The car had been proceeding very slowly behind a covered wagon, which had just before the accident turned to the right; and the motorman, while continuing an altercation with its driver, and looking to the right, suddenly increased the speed of the car, which shot forward and struck plaintiff. Held, that whether plaintiff might not have crossed the track in safety, in the exercise of such care as was reasonably to be expected of one of his age, was a question for the jury.—COSTELLO v. THIRD AVE. R. CO., N. Y., 55 N. E. Rep. 897.

94. RECEIVERS—Authority to Execute Notes.—A receiver, authorized to make purchases of stock, has no implied authority to execute notes therefor, and will be individually liable on notes so executed, though the payee takes them knowing them to have been executed in the receiver's representative capacity, under a mistaken belief that the receiver had authority to execute them as such.—PEORIA STEAM MARBLE WORKS v. HICKEY, Iowa, 81 N. W. Rep. 473.

95. RELEASE AND DISCHARGE—Compromise—Conclusiveness.—A controversy between two persons, actual and in good faith, is a proper subject for a binding contract of settlement, no matter what may be the real merits of the claim upon either side.—GALUSHA v. SHERMAN, Wis., 81 N. W. Rep. 495.

96. RELIGIOUS SOCIETIES—Church Property—Possession.—Where land is donated to a church organized under articles of faith, and having no ecclesiastical superior, and the church building erected thereon was paid for by subscriptions from members and others, and there is no trust imposed on the property, either by the donation or subscriptions, that it should be used for the propagation and support of such articles of faith, the courts will not imply such a trust for the purpose of expelling from its use those who, by regular succession and order, constitute the church, though they have changed in some respects their articles of faith.—FIRST BAPTIST CHURCH OF PARIS v. FORT, Tex., 54 S. W. Rep. 892.

97. REMOVAL OF CAUSES—Diversity of Citizenship.—In an action in a State court, based on a number of claims, which in the aggregate, but not separately, exceed $2,000, and some of which, as shown by the complaint, were assigned to the plaintiff, a petition for removal on the ground of diversity of citizenship must, in connection with the other parts of the record, show the citizenship of plaintiff's assignors; and, to effect a removal, it must appear that the requisite diversity of citizenship exists between defendant and such assignors, as well as between plaintiff and defendant.—MURPHY v. PAYETTE ALLUVIAL GOLD CO., U. S. C. C., D. (Oreg.), 98 Fed. Rep. 821.

98. SALES—Fraudulent Representations.—When logs had lain in the river by plaintiff's mill for two years, and he had sawed and measured some of them with reference to soundness, and subsequently purchased the logs, he cannot refuse to pay for them on the ground that he had relied on defendant's false repre-

sentations as to their soundness, and had been deceived.—BREWER v. ARANTZ, Ala., 26 South. Rep. 922.

99. SEDUCTION—Evidence—Instructions.—In a civil action by a father for the seduction of his daughter, held, it was not error for the trial court to refuse to instruct the jury that, to entitle the plaintiff to recover any damages beyond his actual money loss, it must appear that the debauchment of his daughter was accomplished by seductive arts.—HEIN v. HOLDRIDGE, Minn., 81 N. W. Rep. 522.

100. STATES—Powers to Regulate Public Service Corporations—Constitutional Limitations.—The power of a State to control public service corporations and the use of property devoted to public service by provisions for the safety and convenience of the public, and also by restrictions against unreasonable or extortionate charges and unjust discriminations, is well settled; but such power is subject to the constitutional limitations designed to protect owners of property against oppressive action by the State amounting to a deprivation of such owners of their property without compensation, or without due process of law, or to a denial of the equal protection of the laws.—WESTERN UNION TEL. CO. v. MYATT, U. S. C. C., D. (Kan.), 98 Fed. Rep. 335.

101. STATUTES—Enactment—Evidence.—The due authentication and enrollment of a statute affords only *prima facie* evidence of its passage.—WEBSTER v. CITY OF HASTINGS, Neb., 81 N. W. Rep. 510.

102. TAXATION—Illegal Levy—Injunction.—A court of equity has jurisdiction to restrain by injunction the collection of an illegal levy upon the property of a school district, made by the board of education, in a suit brought by and on behalf of the resident taxpayers of such district.—WINIFREDE COAL CO. v. BOARD OF EDUCATION OF CABIN CREEK DIST., W. Va., 34 S. E. Rep. 776.

103. TAXATION—State Tax on Capital Stock of Bridge Company.—A State tax on the capital stock of a bridge company, consolidated from corporations of different States, which maintains an interstate bridge, is not a tax on a franchise conferred by the federal government, although the corporation has authority under an act of congress to construct the bridge.—KEOKUK & HAMILTON BRIDGE CO. v. PEOPLE OF THE STATE OF ILLINOIS, U. S. S. C., 20 Sup. Ct. Rep. 205.

104. TELEGRAPH COMPANY—Contract Requiring Claim for Damages.—The stipulation of a contract for the transmission of a message, requiring any claim for damages to be presented in writing within 60 days after the message is filed, is void, as against public policy.—DAVIS v. WESTERN UNION TEL. CO., Ky., 54 S. W. Rep. 849.

105. TRESPASS—Negligence.—Where one, for a lawful purpose, and without negligence, explodes a blast on his own land, causing a piece of wood to fall on a person lawfully in the highway, it constitutes a trespass.—SULLIVAN v. DUNHAM, N. Y., 55 N. E. Rep. 928.

106. TRIAL—Deposition—Reading Copy.—A copy of a deposition, the original of which was duly taken and filed with the clerk of the court, and lost, may be read in evidence.—GILMORE v. BUTTS, Kan., 59 Pac. Rep. 645.

107. TRIAL—Jurors—Competency.—A resident taxpayer of an incorporated city is not a qualified juror in an action for personal damages against the city, and a challenge thereto by either party should be sustained.—CITY OF KANSAS CITY v. KIRKHAM, Kan., 59 Pac. Rep. 675.

108. TRUSTS—Purchase Under Agreement to Permit Redemption.—Where the purchaser at a sale in a bankruptcy proceeding took an absolute deed to himself, in violation of a parol agreement to permit the bankrupt to redeem, there was no subsisting, continuing trust, as the purchaser held the land as his own; and, if the statute of 5 years does not apply to an action to enforce the agreement, then the statute of 10 years, applying to all actions not otherwise provided for, must apply.—BUCKLER'S ADMR. v. ROGERS, Ky., 54 S. W. Rep. 848.

109. TRUST—Special Instrument Creating.—Whenever an instrument creating a trust confers upon the trustee any power in trust, or imposes any duty relating to the control or management of the trust estate, or establishes any agency to be performed by the trustee as such, the legal title vests in him in order to enable him to administer the trust; and where decedent, in his lifetime, created in defendant such a trust, proceeds of a sale by defendant in carrying out such trust form no part of decedent's estate. Plaintiff, as administrator, has no rights whatever thereto, and cannot maintain an action therefor as such administrator.—BARRETTE v. DOOLY, Utah, 59 Pac. Rep. 718.

110. WILL—Construction—Estate in Remainder.—Testator devised land in trust, and provided that, if the beneficiary should die without issue, then the land should descend to testator's heirs at law in the same manner as if the will had not been made, and as if the beneficiary had died, without issue, before the testator. Held, that on the testator's death his heirs then living became seised of a vested contingent estate in remainder under the trust, which descended to their heirs, and became an absolute estate, on the death of the beneficiary without issue.—WADSWORTH v. MURRAY, N. Y., 55 N. E. Rep. 911.

111. WILLS—Legacies—Charge on Land.—Though legacies do not stand upon as high ground as debts, yet, if the personal fund be inadequate, or if there are expressions in a will tending to show that the testator had the land in his mind for their payment, they are a charge on the land devised.—HOGG v. BROWNING, W. Va., 34 S. E. Rep. 754.

112. WILLS—Subscription.—Where neither of the contesting witnesses to a will saw the testatrix sign, but she gave it to one of them, stating that it was her will, and requesting him to sign beneath her signature, and he signed beneath a writing or signature thereon, and the second witness signed after the first, but did not remember whether she saw the signature of the testatrix, the question whether the testatrix acknowledged her subscription of the instrument in question to have been made, to each of the subscribing witnesses, should have been submitted to the jury.—IN RE LAUDY'S WILL, N. Y., 55 N. E. Rep. 914.

113. WILLS—Vested Legacy.—A testator left $2,000 of the residue of his estate in trust, to be invested and the income paid to two grandchildren until they became of age, when they were to be paid the principal, and if one died before majority the other was to receive the whole; if both died before majority, it was to be paid to their father. Held, that the legacy to the grandchildren vested on the testator's death, subject to be devested in favor of their father in case they both died before majority, and that where both died before majority, but subsequent to the death of their father, the legacy vested in the survivor, and passed to his mother, as his next of kin.—DUSENBERRY v. JOHNSON, N. J., 45 Atl. Rep. 102.

114. WITNESS—Impeachment.—A witness cannot be impeached by contradictory statements as to matters irrelevant to the issues; hence, where plaintiff was permitted to testify to irrelevant matter, it was not error for the court to refuse to allow defendant to introduce testimony tending to contradict it.—CRUSOE v. CLARK, Cal., 59 Pac. Rep. 700.

115. WITNESSES—Transactions With Persons Since Deceased.—The deposition of a party is not admissible for himself as to a transaction with a person who is dead when the deposition is offered, though living when the deposition was taken.—NEWMAN'S ADMR. v. BLADES, Ky., 54 S. W. Rep. 849.

116. WITNESS FEES—Liability of City.—A city of the first class is liable to witnesses subpœnaed in its behalf, in causes brought by it for the enforcement of its ordinances relating to its local government, for the fees allowed by law.—CITY OF TOPEKA v. GOOD, Kan., 59 Pac. Rep. 681.